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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X
LAWRENCE I. FRIEDMANN,

PLAINTIFF,

-against- Case No:
12 CV 1307
(LDW) (AKT)

RAYMOUR FURNITURE CO., INC., and
LUCY GOLDSTEIN, individually,

DEFENDANTS.
-----X

DATE: February 13, 2013
TIME: 10:52 A.M.

DEPOSITION of the Defendant,
RAYMOUR FURNITURE CO., INC., by a Witness,
PATRICIA DELGENIO, taken by the Plaintiff,
pursuant to a 30(b)(6) and to the Federal
Rules of Civil Procedure, held at the
offices of The Harman Firm, PC, 200 West
57th Street, New York, New York 10019,
before Deborah Garzaniti, a Notary Public
of the State of New York.

1

2 A P P E A R A N C E S:

3

4 THE HARMAN FIRM, PC
5 Attorneys for the Plaintiff
6 200 West 57th Street
New York, New York 10019
BY: PETER ANDREWS, ESQ.

7

8 NIXON PEABODY, LLP
9 Attorneys for the Defendants
50 Jericho Quadrangle - Suite 300 -
Jericho, New York 11753
10 BY: JESSICA CHICLACOS, ESQ.

11

12

13 ALSO PRESENT:
14 Edward T. Groh,
15 Senior Counsel Labor & Employment with
Raymour & Flanigan Furniture
1314 US Highway No. 22
Phillipsburg, NJ 08865

16

Alex Howe

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2 F E D E R A L S T I P U L A T I O N S

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5 IT IS HEREBY STIPULATED AND AGREED by and
6 between the counsel for the respective
7 parties herein that the sealing, filing and
8 certification of the within deposition be
9 waived; that the original of the deposition
10 may be signed and sworn to by the witness
11 before anyone authorized to administer an
12 oath, with the same effect as if signed
13 before a Judge of the Court; that an
14 unsigned copy of the deposition may be used
15 with the same force and effect as if signed
16 by the witness, 30 days after service of
17 the original & 1 copy of same upon counsel
18 for the witness.

19

20 IT IS FURTHER STIPULATED AND AGREED that
21 all objections except as to form, are
22 reserved to the time of trial.

23

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* * * *

25

1 P. DELGENIO

2 P A T R I C I A D E L G E N I O, called as
3 a witness, having been first duly sworn by
4 a Notary Public of the State of New York,
5 was examined and testified as follows:

6 EXAMINATION BY

7 MR. ANDREWS:

8 Q. Please state your name for the
9 record.

10 A. Patricia Delgenio.

11 Q. What is your address?

12 A. 1645 Broadhollow Road,
13 Farmingdale, New York 11735.

14 Q. Hi, how are you?

15 A. Good. Thank you.

16 Q. I am Peter Andrews, Counsel for
17 the Plaintiff, Lawrence Friedmann, in this
18 matter. I will be taking your deposition
19 today. You are here pursuant to Federal
20 Rule of Civil Procedure 30(b)(6), so let me
21 begin by firstly asking you your name?

22 A. My name is Patricia Delgenio.

23 Q. Ms. Delgenio, have you ever
24 been deposed previously?

25 A. No.

1 P. DELGENIO

2 Q. Let me just tell you a little
3 bit about how depositions in general work
4 and what the structure is. It is a
5 question and answer format. I ask the
6 questions, you answer them to the best of
7 your knowledge. If you don't understand
8 one of my questions, please say so and I
9 will do my best to clarify. If you can't
10 recall or you don't know, just say that so
11 that the Court Reporter can take down all
12 of your answers. Your responses have to be
13 verbal, so nods or body language won't work
14 for the Court Reporter. So verbal
15 responses, please.

16 If you need to take a break at
17 any time, please just ask for one. The
18 only thing that I will request is that you
19 not ask for a break while a question is
20 pending. Other than that, we will probably
21 just break once an hour to give everyone a
22 chance to stretch and coffee.

23 Are you represented by Counsel
24 here today?

25 A. Yes.

1 P. DELGENIO

2 Q. Is that Ms. Chiclacos?

3 A. Yes.

4 MR. ANDREWS: Just for the
5 record, can we have your name just
6 stated as present?

7 MR. GRUN: Edward Groh, I am
8 senior counsel for Raymour &
9 Flanigan.

10 MS. CHICLACOS: His appearance
11 will be noted in the transcript.

12 MR. ANDREWS: With me is Alex
13 Howe. He is a legal assistant from
14 our office, from the Harman Firm.

15 Q. Ms. Delgenio, what is your
16 current position?

17 A. I am the vice president of
18 Human Resources field services.

19 Q. For Raymour Furniture?

20 A. Raymour & Flanigan.

21 Q. The Defendant in this case is
22 Raymour Furniture Company, Inc. Do you
23 have an understanding of the relationship
24 between those two companies?

25 MS. CHICLACOS: Objection to

1 P. DELGENIO

2 the form. Go ahead and answer.

3 A. No, I don't have an
4 understanding of the relation. I don't
5 know exactly what you said.

6 Q. You work for Raymour &
7 Flanigan?

8 A. Yes.

9 Q. Where is your office located?

10 A. My office is in Farmingdale,
11 New York.

12 Q. How long have you held your
13 current position?

14 A. My current position, a year.

15 Q. Approximately a year?

16 A. Approximately a year, January.

17 Q. Before your current position,
18 were you employed with Raymour & Flanigan?

19 A. Yes.

20 Q. What was your position before
21 that?

22 A. I was a director of Human
23 Resources.

24 Q. Was that in the same unit of
25 the company?

1 P. DELGENIO

2 A. Yes.

3 Q. You mentioned before field
4 services?

5 A. Yes.

6 Q. Can you explain what that is?

7 A. Yes. We have a central
8 services department in Syracuse and I
9 oversee HR field services which is store
10 and warehouse locations.

11 Q. What geographic area do you
12 oversee?

13 A. Metropolitan New York and New
14 Jersey.

15 Q. Before your current position
16 when you were director of Human Resources,
17 where was that office located?

18 A. The office was the same, but it
19 was Metropolitan Long Island region.

20 Q. Does the current position cover
21 a larger geographic area --

22 A. Yes.

23 Q. -- than the previous position?

24 Thank you.

25 How long did you hold that

1 P. DELGENIO

2 position, the previous position?

3 A. Approximately five years.

4 Q. Did that position cover stores
5 in Long Island?

6 A. Yes.

7 Q. Before that position, were you
8 employed with Raymour & Flanigan?

9 A. Yes.

10 Q. What was your prior position?

11 A. Human Resources manager,
12 regional Human Resources manager.

13 Q. Where was that job located?

14 A. Long Island.

15 Q. Farmingdale?

16 A. That is where my office is, but
17 it was every location on Long Island.

18 Q. But was your office in
19 Farmingdale at that time?

20 A. Yes.

21 Q. What period of time did you
22 hold that position?

23 A. I would say 2007 to 2011, so
24 maybe four years.

25 Q. When did you first begin

1 P. DELGENIO

2 working with Raymour & Flanigan?

3 A. May of 2006.

4 Q. What was your position with
5 them?

6 A. HR field specialist, like a
7 generalist.

8 Q. Before coming to Raymour &
9 Flanigan, what position did you hold?

10 A. I was the director of HR for a
11 financial services firm in Syossett, New
12 York for six years prior to working for
13 Raymour & Flanigan.

14 Q. Do you recall the name of that
15 company?

16 A. It was Americorp.

17 Q. Before that?

18 A. Before that, I worked for an
19 Internet company here in Manhattan. I was
20 there for a year, Opus 360.

21 Q. Are you a college graduate?

22 A. Yes.

23 Q. When did you graduate college?

24 A. 1995, December of 1995, I
25 think.

1 P. DELGENIO

2 Q. Where did you attend college?

3 A. Dowling College. It is in
4 Oakdale, New York.

5 Q. Dowling?

6 A. D-O-W-L-I-N-G.

7 Q. Thank you.

8 What was your major?

9 A. Business administration.

10 Q. I would like to introduce for
11 identification Plaintiff's Exhibit 1 and
12 ask that you take a few minutes to look at
13 it. Take as much time as you need to look
14 at it. I will have specific questions.

15 (Whereupon, the aforementioned
16 document was marked as Plaintiff's
17 Exhibit 1 for identification as of
18 this date by the Reporter.)

19 Q. Again, I will have specific
20 questions, but take as much time as you
21 need to look at that.

22 A. Okay.

23 Q. Have you seen this document
24 previously?

25 A. No.

1 P. DELGENIO

2 Q. Do you have an understanding of
3 what this document is?

4 A. I read it and I understand what
5 it says.

6 Q. Thank you.

7 I just want to direct you to
8 the third page of the document which says
9 "Exhibit A. Testimony Sought by Plaintiff
10 from Witnesses pursuant to Federal Rule
11 Civil Procedure 30(b)(6)."

12 I just wanted to clarify. You
13 have not seen this page previously; is that
14 correct?

15 A. Yes, that's correct.

16 Q. This page, Exhibit A, states
17 "Plaintiffs seeks testimony from
18 Defendant's 30(b)(6) witnesses on the
19 following matters:

20 One, all information related to
21 anti-discrimination policies at Defendant,
22 Raymour Furniture Company, Inc. Two, all
23 information related to disabilities and
24 accommodation of disabilities in the
25 workplace at Defendant, Raymour Furniture

1 P. DELGENIO

2 Company, Inc. Three, all affirmative
3 defenses asserted by Defendants and or to
4 be relied upon in any pleading up to and
5 including trial."

6 Do you see that?

7 A. Yes.

8 Q. Do you have an understanding
9 that you are here to testify regarding
10 those subjects today?

11 A. Yes.

12 Q. How did you acquire that
13 understanding?

14 MS. CHICLACOS: Objection.

15 That calls for information protected
16 by the attorney-client privilege.

17 Q. How did you prepare for today's
18 deposition?

19 MS. CHICLACOS: Objection.

20 Again, it calls for information
21 protected by the attorney-client
22 privilege.

23 Q. Other than discussions with
24 your attorneys, how did you prepare for
25 today's deposition?

1 P. DELGENIO

2 A. I didn't, other than
3 discussions with my attorneys.

4 Q. How many times did you meet
5 with your attorneys to prepare for today's
6 deposition?

7 A. Once.

8 Q. Do you recall when that was?

9 A. Yes.

10 Q. Can you tell me when that was?

11 A. Tuesday this week.

12 Q. Do you recall how long you
13 spent meeting with your attorney regarding
14 this deposition?

15 MS. CHICLACOS: Objection.

16 That calls for information.

17 A. Yes, I do recall.

18 Q. Can you tell me, approximately?

19 A. A little over an hour.

20 Q. I am not going to ask you to
21 tell me anything about what you discussed
22 with your attorney and you shouldn't answer
23 those types of questions and I am sure your
24 attorney will object, so I am just getting
25 at the preparation. Did you review

1 P. DELGENIO

2 documents to prepare for today's
3 deposition?

4 A. Yes.

5 Q. Do you recall what documents
6 you reviewed to prepare for today's
7 deposition?

8 A. The Associate Handbook.

9 Q. The Associate Handbook?

10 A. Yes.

11 Q. Did you review any other
12 documents to prepare for today's
13 deposition?

14 A. No.

15 Q. The Associate Handbook that you
16 reviewed to prepare for today's deposition,
17 do you recall whether that is the current
18 Associate Handbook or a prior version of
19 the Associate Handbook?

20 A. Both, the current and a prior
21 version of the Associate Handbook.

22 Q. Do you recall what the date of
23 the prior version was?

24 A. I want to say 2006 or '07.

25 Q. In your role, in your current

1 P. DELGENIO

2 role or in any positions that you
3 previously held with Raymour & Flanigan,
4 have you, yourself, participated in writing
5 the Associate Handbook?

6 MS. CHICLACOS: Objection to
7 the form. Go ahead and answer.

8 A. Did I participate in writing
9 the Associate Handbook?

10 Q. I will strike that. Let me
11 rephrase the question.

12 Do you know how the Associate
13 Handbook is prepared?

14 A. Can you clarify your question?

15 Q. I will try.

16 You testified that you reviewed
17 the current version of the Associate
18 Handbook and a prior version of that
19 handbook. I assume someone or one or more
20 people prepares that handbook. Do you know
21 how that handbook is prepared?

22 MS. CHICLACOS: Objection to
23 the form.

24 A. I have an idea how it is
25 prepared. I don't know that I would be

1 P. DELGENIO

2 comfortable declaring exactly how the
3 handbook is prepared.

4 Q. I am asking you for your
5 understanding of how it is prepared?

6 A. My understanding of how the
7 handbook is prepared is that the handbook
8 is reviewed on an annual basis and any
9 updates that need to be done to policies
10 are conferred with our legal counsel and
11 owners of our company and if there are
12 adjustments to be made, they are made and
13 represented in the next edition of the
14 handbook.

15 Q. Do you participate in the
16 annual review of the handbook?

17 A. I always have input into -- I
18 am always welcome to give my opinion to
19 anything in the handbook.

20 Q. Do you know who oversees the
21 handbook revision process?

22 A. I could tell you who I believe
23 it is.

24 Q. Who do you believe it is?

25 A. I believe it is Steve McPeak.

1 P. DELGENIO

2 Q. Who is Mr. McPeak?

3 A. He is the vice president of
4 Human Resources for Raymour & Flanigan.

5 Q. Is he the person who you
6 currently report to?

7 A. Yes.

8 Q. Do you report directly to him?

9 A. Yes.

10 Q. Where is Mr. Peak's office?

11 A. McPeak.

12 Q. McPeak's office located?

13 A. Liverpool, New York.

14 Q. Do you have an understanding of
15 what his responsibilities are within the
16 company?

17 MS. CHICLACOS: Objection to
18 the form.

19 A. My understanding of his
20 responsibilities are that he oversees all
21 functions of Human Resources.

22 Q. Is that national?

23 A. Yes.

24 Q. For all of Raymour & Flanigan
25 stores?

1 P. DELGENIO

2 A. Yes.

3 Q. The Plaintiff in this case is
4 Mr. Lawrence Friedmann. Do you understand
5 that that is the case?

6 A. Yes.

7 Q. Have you ever met Mr.
8 Friedmann?

9 A. Yes.

10 Q. How many times have you met Mr.
11 Friedmann?

12 A. Oh, gosh. Many times in the
13 years that he worked with us. Many times.
14 I don't know that I can give you an exact
15 number.

16 Q. Did you ever speak with him?

17 A. Yes.

18 Q. Do you recall speaking with him
19 regarding Human Resources issues?

20 A. No.

21 Q. Do you recall in general what
22 you would speak with him about?

23 A. My only recollection of
24 conversations with Larry Friedmann, as we
25 called him at the time, was hey, how are

1 P. DELGENIO

2 you? How was your weekend? How are things
3 going? How is your family? Normal
4 conversations that I would have with any
5 associate upon greeting them.

6 Q. In the position that you held
7 immediately prior to your current position,
8 which, correct me if I am mistaken,
9 director of Human Resources?

10 A. Yes.

11 Q. Again, what period of time
12 would you have held that position?

13 A. I am guessing.

14 Q. Yes. Approximately.

15 A. I would say approximately from
16 2007 to 2011.

17 Q. During that period of time in
18 that position as director of Human
19 Resources, would your job have entailed
20 visiting Raymour & Flanigan stores on a
21 regular basis?

22 A. Yes.

23 Q. Why would you be visiting the
24 stores on a regular basis?

25 A. I would visit stores on a

1 P. DELGENIO

2 regular basis to meet with associates, take
3 an assessment of the location, of
4 the associate's location, an assessment of
5 leadership in the location. If there are
6 meetings in store locations, I would go to
7 in store locations for meetings.

8 Q. Did you ever have any
9 responsibility for supervising Mr.
10 Friedmann?

11 A. No.

12 Q. Did you ever participate in
13 evaluating Mr. Friedmann's performance?

14 A. No.

15 Q. Are you aware of any complaints
16 anyone may have made regarding Mr.
17 Friedmann's performance?

18 A. Can you help me understand what
19 you mean by complaints? Complaints is an
20 HR term. Generally managers don't complain
21 about their associates. So can you help
22 me?

23 Q. I will try my best to clarify.
24 You testified that you had no
25 responsibility for supervising Mr.

1 P. DELGENIO

2 Friedmann and that you never participated
3 in evaluating Mr. Friedmann's performance;
4 is that correct?

5 A. That is correct.

6 Q. In your various roles, I know
7 you have had numerous HR roles for the
8 company, did you become aware of complaints
9 made by anyone to the company regarding Mr.
10 Friedmann's performance?

11 MS. CHICLACOS: Objection to
12 the form.

13 A. I never received a complaint
14 from a store leader about Mr. Friedmann's
15 performance.

16 Q. Did you ever participate in an
17 investigation of Mr. Friedmann's
18 performance?

19 A. No, I never investigated Mr.
20 Friedmann's performance.

21 Q. Did anyone ever speak with you
22 about a recommendation he or she wished to
23 make regarding Mr. Friedmann's employment
24 with the organization?

25 A. Yes.

1 P. DELGENIO

2 Q. Do you recall when that was?

3 A. I don't recall the exact time
4 frame or the exact day.

5 Q. Can you give me an approximate
6 year, month?

7 A. It has been a lot of years.
8 No, I can't.

9 Q. Would it have been within the
10 past three years or longer?

11 A. It would have been within --
12 this is a guesstimate. Whenever the date
13 of his release from service was, it would
14 have been approximately six weeks,
15 two months before that time.

16 Q. To the best of your
17 recollection, would that have been the
18 first time --

19 A. Yes.

20 Q. -- that someone made a
21 recommendation to you regarding Mr.
22 Friedmann's employment?

23 A. Yes. I would like to clarify?

24 Q. Yes.

25 A. It was at that time that I was

1 P. DELGENIO

2 made aware that Mr. Friedmann was having
3 performance discussions or the leadership
4 team was having performance-related
5 discussions with Mr. Friedmann. There was
6 no recommendation made about his employment
7 at that time.

8 Q. Okay. I don't want us to get
9 ahead of ourselves. I will go back.

10 You testified that you became
11 aware that certain members of store
12 leadership or management were having
13 discussions with Mr. Friedmann regarding
14 his performance and that you became aware
15 of those discussions approximately six
16 weeks to eight weeks prior to his release?

17 MS. CHICLACOS: Objection. It
18 is a mischaracterization of her
19 testimony.

20 Go ahead and answer, please.

21 Q. Well, since your Counsel feels
22 that that is a mischaracterization, I am
23 going to have to ask you the question
24 again.

25 When did you become aware of

1 P. DELGENIO

2 the fact that store leaders were having
3 discussions with Mr. Friedmann regarding
4 his performance?

5 A. After they sat down with him
6 and presented him with a Performance
7 Improvement Plan or a Coaching Plan.

8 Q. How did you become aware of the
9 fact that that had happened?

10 A. One of my direct reports let me
11 know.

12 Q. Do you recall who that was?

13 A. Yes, Christine Roland.

14 Q. Who is Christine Roland?

15 A. Christine Roland is currently
16 the HR field specialist for the Metro east
17 region.

18 Q. What area does the Metro east
19 region encompass?

20 A. Well, it is Suffolk and Nassau
21 County.

22 Q. You testified that she reported
23 to you?

24 A. Yes.

25 Q. How many HR field specialists

1 P. DELGENIO

2 report to you?

3 A. Currently?

4 Q. Currently?

5 A. Five.

6 Q. At the time that this report
7 from Mr. Roland to you was made, how many
8 HR field specialists reported to you?

9 A. I am going to say two.

10 Q. What was reported to you?

11 A. Everyone who was put on a
12 Performance Plan in that location, actually
13 I would say in any of Chris' locations.
14 She just made me aware, hey, the following
15 people have been put on Performance Plan.

16 Q. Just so I am clear, you did not
17 participate in placing anyone on a
18 Performance Plan?

19 A. No.

20 Q. Did, to your knowledge,
21 Ms. Roland participate in placing any
22 people on a Performance Plan?

23 A. No.

24 Q. Do you have an understanding of
25 how people would get placed on Performance

1 P. DELGENIO

2 Plans?

3 A. Yes.

4 Q. Can you describe that process?

5 A. Generally in the sales
6 organization, which is very heavily metric
7 driven, there is a weekly commission review
8 where a leader in the store will sit down
9 with an associate and measure their success
10 or their performance, metrics against the
11 standard expectation or the minimum
12 expectation, and discuss whether their
13 performance is either better than the
14 expectation, not on par with the
15 expectation.

16 If over a period of time an
17 associate performs below expectation, the
18 store leader will generally summarize the
19 amount of time that the person has been
20 performing below expectation and
21 specifically to what extent, in what areas
22 of their business and offer them assistance
23 if they need it to hit the goals and a time
24 frame in which they are expected to hit set
25 goals.

1 P. DELGENIO

2 Q. In general, what is your role
3 currently with respect to the oversight of
4 Performance Plans, Performance Improvement
5 Plans?

6 A. My role, my current role with
7 oversight to administration of Performance
8 Improvement Plans are generally knowledge
9 that they have happened.

10 Q. Was that true during your prior
11 position as well?

12 A. Yes.

13 Q. Did you personally review the
14 Performance Plans?

15 A. No.

16 Q. Would it be fair to say that
17 apart from knowing who had been placed on a
18 Performance Plan, you did not concern
19 yourself with why they had been placed on a
20 Performance Plan?

21 MS. CHICLACOS: Objection to
22 the form.

23 A. When I am made aware of Action
24 Plans or Performance Plans that are
25 administered, I use my knowledge of the

1 P. DELGENIO

2 associate and of the store and if I have
3 any questions related, I will ask them, so
4 it would be accurate to say that I don't
5 concern myself.

6 Q. But you don't actually read the
7 Performance Plans?

8 A. I have. I can't say that I
9 read every single one, but I have read
10 Performance Improvement Plans.

11 Q. Do you recall reading any of
12 Mr. Friedmann's Performance Improvement
13 Plans?

14 A. I don't recall reviewing them
15 at that time.

16 Q. Once you became aware that Mr.
17 Friedmann had been placed on a Performance
18 Improvement Plan, did you take any action
19 at that time?

20 A. No.

21 Q. Did you investigate the Plan or
22 why he had been put on the Plan?

23 A. It is my recollection that I
24 worked with Christine Roland and my
25 recollection is that it was her assertion

1 P. DELGENIO

2 that the Plan seemed standard.

3 Q. Could you elaborate on what you
4 mean by that, when you say that the Plan
5 seemed standard?

6 A. Yes. As I previously
7 described, Plans generally say this is your
8 performance, measure it against the
9 expectation, here is the difference between
10 the two, here is where you need to go and
11 how to get there. It is my recollection
12 that Mr. Friedmann's Performance Plan was
13 very much in the line of that standard type
14 Performance Plan.

15 Q. Do you know if Ms. Roland would
16 have participated in the decision to place
17 Mr. Friedmann on a Performance Plan?

18 A. She would not have.

19 Q. She would not have?

20 A. She would not have, unless the
21 leadership team had questions about it.

22 Q. When you say "the leadership
23 team," who are you referring to?

24 A. Any store leaders, store
25 manager, showroom managers.

1 P. DELGENIO

2 Q. Do you recall who the store
3 manager was at the location where Mr.
4 Friedmann worked at the time that he was
5 placed on the Performance Plan?

6 A. Yes, Lucy Goldstein.

7 Q. So just to recap, approximately
8 six to eight weeks prior to Mr. Friedmann's
9 release you became aware of the fact that
10 he was on a Performance Improvement Plan?

11 A. Yes, and I capture it that way
12 because I am not sure where it was in the
13 year, but my guess is that it was about six
14 to eight weeks prior.

15 Q. Can you describe what, if any,
16 actions you took with respect to Mr.
17 Friedmann's employment after becoming aware
18 of that?

19 A. I don't recall taking any
20 actions specific to his employment after
21 that.

22 Q. Were you updated in the
23 intervening period as to what was happening
24 to Mr. Friedmann?

25 A. Yes.

1 P. DELGENIO

2 Q. Can you describe the nature of
3 those updates?

4 A. My updates would of come
5 through Chris Roland and my recollection is
6 that Mr. Friedmann was given the
7 opportunity to interview at another
8 location and that there wasn't a tremendous
9 interest on either side at that location,
10 so Mr. Friedmann remained in the Garden
11 City location.

12 Q. When you say "there wasn't a
13 tremendous interest on either side," what
14 do you mean?

15 A. My recollection is that, and
16 this is my recollection through Chris
17 Roland, however many years ago, but my
18 recollection is that when Mr. Friedmann was
19 offered the opportunity to interview at
20 Carle Place, he was not excited about it.
21 That's the best way that I can capture it.

22 Q. Do you know why Mr. Friedmann
23 was asked to interview at the Carle Place
24 store?

25 A. I wasn't told specifically by

1 P. DELGENIO

2 store leadership, but very often we will
3 look to find a location that can help make
4 an associate successful and my
5 understanding is that Mr. Friedmann started
6 in the Carle Place location and the hope
7 was in returning to the Carle Place
8 location he would be better able to be
9 successful.

10 Q. Just to recap, all of this was
11 relayed to you by Ms. Roland?

12 A. Correct.

13 Q. You had no discussions with
14 store leadership about this situation?

15 A. Not that I recall, no.

16 Q. Do you recall who the store
17 leadership at his location would have been
18 at the time?

19 A. Other than Lucy Goldstein?

20 Q. Other than Lucy Goldstein?

21 A. Oh, gosh. It would be a best
22 guess who the showroom managers were. I
23 would guess Kevin Sagendorf (phonetic), and
24 I can't recall who the other one was at
25 that period of time.

1 P. DELGENIO

2 Q. So Chris Roland advised you
3 that Mr. Friedmann had interviewed at the
4 Carle Place location?

5 A. Yes.

6 Q. Did she advise you what the
7 upshot of that interview was?

8 A. Yes. Her summary was, A, as I
9 had previously said, Mr. Friedmann wasn't
10 particularly interested in the opportunity
11 at Carle Place and that the store manager
12 was not impressed in her interview with Mr.
13 Friedmann and declined to have him come on
14 board.

15 Q. To the best of your knowledge,
16 would that have been a decision to be made
17 by the store manager at his or her
18 discretion?

19 A. Yes.

20 Q. Do you recall Ms. Roland
21 telling you anything else at that time?

22 A. No.

23 Q. Was it your understanding that
24 Mr. Friedmann was, therefore, going to
25 continue to work at the Garden City

1 P. DELGENIO

2 location?

3 A. Yes.

4 Q. Under Ms. Lucy Goldstein's
5 supervision?

6 A. Yes.

7 Q. Did you hear about Mr.
8 Friedmann's employment again after that
9 point?

10 A. When his employment was
11 terminated is my next recollection of
12 anything related to his status.

13 Q. How were you advised that he
14 had been terminated?

15 A. It would have been by Chris
16 Roland.

17 Q. Would it be fair to say -- I am
18 sorry.

19 A. Go ahead.

20 Q. I didn't mean to interrupt you.

21 A. That's okay.

22 Q. You testified it would have
23 been by Chris Roland?

24 A. Yes.

25 Q. Do you recall what Chris Roland

1 P. DELGENIO

2 told you?

3 A. Do I recall?

4 Q. What Chris Roland told you?

5 A. Yes, my -- again, this is a
6 guess, not a recollection. My guess is
7 that Chris Roland said Larry Friedmann
8 didn't make his Performance Improvement
9 Plan and they released him from service or
10 they are going to release him from service.
11 I am not sure if it was precisely before or
12 after.

13 Q. Correct me if I am wrong, you
14 did not play a role in that decision?

15 A. No.

16 Q. Is that standard practice in
17 your position, to not play a role in that
18 decision?

19 A. No. If I believe there is
20 reason to insert myself into a
21 decision-making process related to an
22 associate, I will.

23 Q. Can you give me some examples
24 of when you might consider inserting
25 yourself into the process?

1 P. DELGENIO

2 A. Sure. If an associate has
3 complained to Chris Roland or complained to
4 myself or complained to leadership about
5 maltreatment, about the environment in the
6 store location prior to being advised of
7 their intent to terminate, I would look
8 more closely at it to determine any
9 validity, if it exists, before giving my
10 input or opinion on the decision that is
11 being made.

12 Q. Did you give your input or
13 opinion on the decision to terminate Mr.
14 Friedmann?

15 A. I don't recall doing so, no.

16 Q. Would it have been part of your
17 job to do so?

18 A. If I determined it was
19 appropriate to insert myself into the
20 decision-making process, yes, it would have
21 been part of my job to do so. I don't
22 always do that.

23 Q. When a store manager, in your
24 experience, such as Ms. Goldstein, believes
25 that a sales associate, such as Mr.

1 P. DELGENIO

2 Friedmann, is not meeting his performance
3 objectives and wishes to move towards the
4 termination of the employment of the
5 associate, what is your understanding of
6 that process?

7 MS. CHICLACOS: Objection to
8 the form.

9 A. Generally a store manager will
10 work with their direct leader and advise
11 them of their decision or intent to take
12 action related to an associate's
13 performance and the regional director would
14 partner with the HR field specialist to
15 advise them of their intent.

16 Q. Do you recall who, at the time
17 that Mr. Friedmann was terminated, do you
18 recall who Ms. Lucy Goldstein's direct
19 supervisor was?

20 A. I don't recall exactly who it
21 was.

22 Q. Do you recall what position
23 that person would have held?

24 A. Who Lucy would of reported to
25 organizationally?

1 P. DELGENIO

2 Q. That's correct.

3 A. It would have been a regional
4 director of sales.

5 Q. For the region in which the
6 Garden City store was located in?

7 A. Correct.

8 Q. You don't recall that person's
9 name?

10 A. I am trying to. I am thinking.

11 Q. And if you remember, please
12 tell me.

13 A. I will.

14 Q. And organizationally, who would
15 a regional director report to?

16 A. A vice president.

17 Q. A vice president?

18 A. Of sales.

19 Q. A vice president of sales. Do
20 you recall who the vice president of sales
21 was in the area that would cover the Garden
22 City location?

23 A. James Powers.

24 Q. There would have been one
25 person between Ms. Goldstein and Mr.

1 P. DELGENIO

2 Powers?

3 A. Yes.

4 Q. Just to review the process for
5 recommending a termination, if that is what
6 a store leader was inclined to do, you
7 testified that Ms. Goldstein would work
8 with her regional director?

9 A. Yes. My best guess is that it
10 would have been Tony Bender. Again, the
11 time frame I am not exactly sure.

12 Q. What is your understanding of
13 that process of the store manager working
14 with the regional director?

15 A. A phone call, an e-mail, any
16 number of ways. There is not a defined
17 required process, to my knowledge.

18 Q. Does HR have a role in that
19 process?

20 A. Yes. As I stated, the regional
21 director would partner with the HR field
22 specialist and advise of their
23 decision-making or their intent to take
24 action with said associate or associates
25 and the HR specialist would determine if

1 P. DELGENIO

2 they need to involve themselves or inquire
3 further into the decision-making and, you
4 know, loop me in if they felt there was
5 additional inquiries that should be made or
6 questions that should be asked.

7 Q. That person, the HR field
8 specialist, that would have been
9 Ms. Roland?

10 A. Correct.

11 Q. So is it accurate to say that
12 Ms. Roland would have been contacted by Mr.
13 Bender or whoever the regional director
14 was?

15 A. Likely.

16 Q. Likely?

17 A. Yes.

18 Q. Would that process ordinarily
19 have been in writing?

20 A. As I said, there is no
21 requirement of process, so I can't tell you
22 what it would ordinarily have been.

23 Q. At the time that Mr. Friedmann
24 was terminated, do you recall seeing any
25 documentation or paperwork regarding his

1 P. DELGENIO

2 termination?

3 A. I don't believe I saw his
4 Performance Improvement Plan, no.

5 Q. Do you recall if Ms. Roland
6 would of had to prepare documentation?

7 A. No, she would not have.

8 Q. She would not have had to
9 prepare documentation?

10 A. No.

11 Q. Do you recall if someone from
12 Human Resources would have to be present
13 when the sales associate was advised of his
14 termination?

15 A. No.

16 Q. Do you know if Ms. Roland was
17 involved in communicating Mr. Friedmann's
18 termination to Mr. Friedmann?

19 A. I don't believe so.

20 Q. Do you know whether Ms. Roland
21 had any direct communications with Mr.
22 Friedmann in his last eight weeks of
23 employment with the company?

24 A. I don't know. I don't believe
25 so, but I don't know.

1 P. DELGENIO

2 Q. Is it fair to say that you
3 don't know whether anyone from HR even
4 spoke with Mr. Friedmann regarding his
5 performance issues in his last eight weeks
6 of employment?

7 MS. CHICLACOS: Objection to
8 the form.

9 A. It is fair to say that if Chris
10 Roland or anyone who reported to me had a
11 conversation with Larry Friedmann about his
12 performance, they would of let me know
13 about it.

14 Q. Your testimony is that no one
15 did?

16 A. Correct. I don't recall.

17 Q. In your experience, is that
18 unusual?

19 A. Is what unusual?

20 Q. For an HR representative to not
21 have any communications with an employee in
22 his last weeks prior to being terminated?

23 A. No, it is not unusual.

24 Q. You testified previously, early
25 on in your deposition, that you met Mr.

1 P. DELGENIO

2 Friedmann on several occasions just in the
3 course of visiting stores?

4 A. Yes.

5 Q. At any point in those
6 interactions with Mr. Friedmann, do you
7 recall discussing any HR concerns with him?

8 A. No.

9 Q. Do you recall him raising any
10 HR concerns with you?

11 A. No.

12 Q. Do you recall Ms. Roland ever
13 discussing with you that Mr. Friedmann had
14 raised any HR concerns?

15 A. I don't recall that, no.

16 Q. Prior to being made aware of
17 the fact that Mr. Friedmann had been placed
18 on a Performance Plan approximately six to
19 eight weeks prior to his termination, were
20 you aware of any performance issues with
21 Mr. Friedmann's employment?

22 A. No.

23 Q. Did you, at any point, review
24 Mr. Friedmann's history of performance with
25 the company?

1 P. DELGENIO

2 A. No.

3 Q. I am sorry if we have gone over
4 this before, but I do want the record to be
5 clear.

6 Is it fair to say that you had
7 no role at all in making any recommendation
8 as to whether Mr. Friedmann should be
9 terminated?

10 A. It is fair to say that. If I
11 felt there was a need to insert myself into
12 that process, I would of done so, but my
13 role is dictated by my assessment of the
14 situation.

15 Q. Have you inserted yourself into
16 the process in other proposed terminations?

17 A. Yes.

18 Q. Could you describe some
19 examples of when you inserted yourself into
20 the process?

21 A. If I had an associate who
22 complained that their leader was
23 maltreating them or if I knew that the
24 overall morale in a location was poor, just
25 for a couple of examples, I would insert

1 P. DELGENIO

2 myself in, ask more questions and try to
3 gather information.

4 Q. Is it fair to say that you were
5 not aware of the existence of any of those
6 issues with respect to Mr. Friedmann's
7 employment?

8 A. That's correct.

9 Q. Is it also fair to say that Mr.
10 Friedmann was never offered the opportunity
11 to meet with an HR representative during
12 the last eight weeks of his employment?

13 A. No.

14 MS. CHICLACOS: Objection to
15 the form. Go ahead.

16 A. We have an open door policy at
17 Raymour & Flanigan. It is posted on our
18 walls and an HR field person is in every
19 location once a week, having the kinds of
20 conversations that I spoke about before,
21 hi, how are you? How is everything going?
22 How is your day? You know, did you have a
23 good weekend? Things of that nature. So
24 there is at least a weekly opportunity for
25 any associate to speak to their HR person

1 P. DELGENIO

2 face-to-face. So whether an opportunity
3 was offered, I don't know, but the
4 opportunity is very apparent.

5 Q. Would it have been Ms. Roland
6 who would have been the HR representative
7 visiting Mr. Friedmann's location?

8 A. Yes. I may have visited also
9 during that time, it was part of my region,
10 but I can't specifically tell you what
11 weeks I was there.

12 Q. How are sales associates made
13 aware of the open door policy that you just
14 described?

15 A. Well, in the orientation
16 process, it is discussed by their HR
17 person, it is listed out in our Associate
18 Handbook, there is a Workers 1 poster.
19 Workers 1 is a 1-800 hotline number that
20 they can call if they are not comfortable
21 speaking to someone in the field. That
22 goes to an anonymous service that is
23 checked by our central services team in
24 Syracuse. There is a sheet in the break
25 room and in the sales office that has the

1 P. DELGENIO

2 contact information for every HR person in
3 the market with their cell phone numbers,
4 fax number, e-mail address and things like
5 that. That is standard in every location
6 that we have.

7 Q. Do you know when Mr. Friedmann
8 first began working with Raymour &
9 Flanigan?

10 A. Well, I know it was before my
11 time. I guess it is 2005.

12 Q. Why do you believe it was 2005?

13 A. Because he was there before me
14 and I started in 2006.

15 Q. Do you know anything about Mr.
16 Friedmann's performance in 2005?

17 A. No.

18 Q. Do you know anything about Mr.
19 Friedmann's performance in 2006?

20 A. No.

21 Q. Do you know anything about his
22 performance in 2007?

23 A. No, not specifically to him,
24 no. I didn't have any specific information
25 presented to me about Mr. Friedmann's

1 P. DELGENIO

2 performance until he was put on a
3 Performance Plan.

4 Q. So again, just for clarity of
5 the record, the six to eight weeks prior to
6 his termination, to the best of your
7 recollection, is the first time you were
8 ever alerted to anyone having any issue
9 with Mr. Friedmann's work performance?

10 A. That's my recollection, yes.

11 Q. You stated or you testified
12 earlier that Ms. Roland indicated to you
13 that Mr. Friedmann was terminated?

14 A. I am not sure if it was right
15 before or immediately after, but I was
16 advised by Chris either that he imminently
17 was going to be terminated or had been. I
18 am not sure of the time frame.

19 Q. And your decision was to not
20 get involved further at that point?

21 A. It was my understanding that he
22 had not met the expectation laid out in his
23 Performance Plan, so I didn't insert myself
24 further.

25 Q. Apart from Ms. Roland, did

1 P. DELGENIO

2 anyone else communicate with you about Mr.
3 Friedmann at that time?

4 A. Not to my recollection, no.

5 Q. What does HR do when an
6 employee is about to be terminated?

7 A. In field HR, as I said
8 earlier -- well, central services does
9 compensation and payroll, so they have the
10 compensation and benefits, they have things
11 that they do that we are not responsible
12 for in the field, but the HR function, as I
13 said, we will take a look at the associate,
14 the location, the leadership team, the
15 performance management documentation, how
16 the associate is measured and, as I said
17 earlier, determine if there is anything
18 that stands out to us that would cause us
19 to ask more questions or do further
20 inquiries with the leadership as to the
21 decision-making.

22 Q. You testified that in Mr.
23 Friedmann's case, you felt that that was
24 not necessary?

25 A. Yes, that is what I testified.

1 P. DELGENIO

2 Q. Do you know if other employees
3 at Mr. Friedmann's location were on
4 Performance Improvement Plans?

5 A. I believe --

6 MS. CHICLACOS: Time frame?

7 Q. In the year in which Mr.
8 Friedmann was terminated?

9 A. I believe there were several.

10 MS. CHICLACOS: Can we take a
11 five-minute break, please?

12 MR. ANDREWS: Absolutely. I
13 was going to suggest the same thing.
14 Five, ten minutes.

15 (Whereupon, a short recess was
16 taken.)

17 Q. We are back on the record after
18 a break.

19 I want to take us right around
20 the time that you were advised that Mr.
21 Friedmann was being terminated or about to
22 be terminated. Do you recall when that
23 was?

24 A. No.

25 Q. Do you recall what year it was?

1 P. DELGENIO

2 A. Is it 2010? That's my best
3 guess.

4 Q. If I told you it was June 18,
5 2011 or approximately June 18, 2011, would
6 you have any reason to believe that that
7 was incorrect?

8 A. I wouldn't have any reason to
9 believe that that was incorrect.

10 Q. At the time that you were
11 advised that he was going to be terminated
12 or was being terminated by Ms. Roland, you
13 testified that Ms. Roland advised you that
14 Larry didn't make his numbers?

15 MS. CHICLACOS: Objection.

16 A. Yes.

17 Q. Can you tell us what you were
18 advised at the time?

19 A. That Larry Friedmann was going
20 to be released from service, he didn't meet
21 the expectations of his Performance
22 Improvement Plan, something to that effect,
23 and in addition to anyone being released
24 from service at that time.

25 Q. It is your testimony at that

1 P. DELGENIO

2 time that you did not feel that there was
3 any need for you to become involved in that
4 situation?

5 A. I wasn't advised of any reason
6 to be, and, therefore, I didn't feel there
7 was.

8 Q. After Mr. Friedmann was
9 terminated, did there ever come a point in
10 time when you once again heard about Mr.
11 Friedmann's relationship with the company?

12 A. Can you clarify your question?

13 Q. After his termination, were you
14 ever advised that Mr. Friedmann was
15 challenging his termination in some way?

16 MS. CHICLACOS: I am going to
17 object. The question calls for the
18 production of attorney-client
19 privilege information.

20 MR. ANDREWS: So you are
21 directing your Witness not to answer?

22 MS. CHICLACOS: Yes.

23 Q. Are you aware of the fact that
24 Mr. Friedmann has filed a lawsuit in this
25 action?

1 P. DELGENIO

2 A. Yes.

3 Q. Do you recall when you became
4 aware of that?

5 A. I guess shortly after Counsel
6 became aware.

7 Q. Are you aware of the
8 allegations that Mr. Friedmann has made in
9 his Complaint?

10 A. Yes, I believe so.

11 MR. ANDREWS: I would like to
12 mark as Plaintiff's Exhibit 2 a
13 document. If you can mark it first
14 before the Witness sees it.

15 (Whereupon, the aforementioned
16 document was marked as Plaintiff's
17 Exhibit 2 for identification as of
18 this date by the Reporter.)

19 A. Okay.

20 Q. Have you seen this document
21 previously?

22 A. No.

23 Q. In your current position, if a
24 former employee sues the company, would you
25 ordinarily become aware of that fact?

1 P. DELGENIO

2 A. Yes.

3 Q. How would you become aware of
4 that fact?

5 A. By Counsel.

6 Q. In general, I know you
7 testified that you have not seen this
8 document previously, I am just asking about
9 the general process, what does that general
10 process consist of?

11 MS. CHICLACOS: I am going to
12 object and instruct the Witness not
13 to answer, as this is beyond the
14 scope of the 30(b)(6) Deposition
15 Notice which related to, one,
16 information related to
17 anti-discrimination policies, two,
18 information related to disabilities
19 and accommodation of disabilities in
20 the workplace, and three, affirmative
21 defenses asserted by Defendants.

22 HR's knowledge of lawsuits does
23 not fall within any three of these
24 categories.

25 MR. ANDREWS: I respectfully

1 P. DELGENIO

2 disagree. The 30(b)(6) Witness has
3 testified firstly that she has not
4 previously seen even the Notice of
5 Deposition for her in this action and
6 now has testified that she has not
7 previously seen the very Complaint
8 filed by the Plaintiff in this
9 action. In light of that, we feel
10 that the line of questioning is
11 appropriate regarding the company's
12 policies for handling discrimination
13 related complaints regarding
14 employees.

15 If you are going to direct your
16 Witness not to answer, we may need to
17 take a break and I may need to
18 discuss the matter with Mr. Harman.

19 MS. CHICLACOS: I am going to
20 direct her not to answer. I have
21 given you a lot of leeway already in
22 terms of questions that went beyond
23 the scope. The Complaint is not even
24 listed within the 30(b)(6) Notice,
25 nor is anything related to the

1 P. DELGENIO

2 company's knowledge of the
3 complaints. It is related to, again,
4 discrimination policies, disability
5 and accommodation policies and
6 Defendant's affirmative defenses.
7 Because of that, because it is our
8 position that Mr. Friedmann was
9 terminated for legitimate
10 non-discriminatory and
11 non-retaliatory reasons, I gave you a
12 little leeway earlier, that's it.

13 The Complaint and the company's
14 receipt of it and upon receipt, what
15 it did, is not on the 30(b)(6)
16 Notice. If you would like to call
17 the Court, call the Court.

18 MR. ANDREWS: Before we do
19 that, just to make my position clear,
20 Mr. Friedmann's Complaint that the
21 Witness said she did not previously
22 review or seen contains numerous
23 allegations of age discrimination and
24 disability discrimination, and in
25 light of the Witness' inability to

1 P. DELGENIO

2 even recognize the document, we
3 believe that this line of questioning
4 is appropriate.

5 MS. CHICLACOS: Mr. Andrews, if
6 I may, you questioned the Witness
7 about her particular knowledge of
8 Plaintiff Friedmann's complaints,
9 which is part of his lawsuit.
10 Whether or not she seen the actual
11 document is irrelevant.

12 The 30(b)(6) Notice, again,
13 does not ask for a witness who has
14 knowledge of Mr. Friedmann's claims
15 and allegations in this action. It
16 asks for a witness with knowledge of
17 policies and our affirmative defenses
18 and Ms. Delgenio is well versed in
19 both of these. We have proven that
20 already today. What you are asking
21 at this point is beyond the scope.

22 MR. ANDREWS: We have to take a
23 break. I am going to have to discuss
24 it. I believe that your
25 interpretation is overly narrow and I

1 P. DELGENIO

2 do not believe that the Court would
3 agree with it, but there is no point
4 in wasting more time about that. We
5 will go off the record for a few
6 minutes and hopefully resolve this.

7 MS. CHICLACOS: Okay.

8 (Whereupon, a short recess was
9 taken.)

10 MR. ANDREWS: We are back on
11 the record. Our office is attempting
12 to, just so everyone knows, to
13 contact Judge Tomlinson to ascertain
14 her availability to rule on this
15 matter.

16 I will ask you, the Court
17 Reporter, to just mark this section
18 of the deposition so if we come back
19 to it, we know where to come back to
20 it. I don't want to waste time, so
21 we will move on.

22 Q. We are up to 3. I would like
23 to mark as Exhibit 3 a document and ask
24 that, as with the previous exhibit, you
25 take some time to review it and I will have

1 P. DELGENIO

2 specific questions for you.

3 (Whereupon, the aforementioned
4 document was marked as Plaintiff's
5 Exhibit 3 for identification as of
6 this date by the Reporter.)

7 A. Okay.

8 Q. Have you had the opportunity to
9 review the document marked as Plaintiff's
10 Exhibit 3?

11 A. Today, yes.

12 Q. Have you seen this document
13 previously?

14 A. No.

15 Q. I take it that you did not
16 participate in the preparation of this
17 document?

18 A. No, I did not participate in
19 the preparation of this document.

20 Q. I just want to turn your
21 attention back to Exhibit 1, the Notice of
22 Deposition. It is the third page of that.
23 I direct you to point three. Well, I will
24 direct you to the section that says
25 "Plaintiffs seeks testimony from

1 P. DELGENIO

2 Defendant's 30(b)(6) witnesses on the
3 following matters:

4 All affirmative defenses
5 asserted by Defendants and or to be relied
6 upon in any pleading up to and including
7 trial."

8 Do you see that comment?

9 A. Yes.

10 Q. You testified earlier that you
11 were prepared to testify regarding that
12 subject?

13 A. Prepared to testify to
14 everything we have affirmed as a defense.

15 MR. ANDREWS: I am sorry. Off
16 the record.

17 (Whereupon, an off-the-record
18 discussion was held.)

19 MR. ANDREWS: Can I ask you to
20 bring me back to where we were right
21 before the call came in.

22 (Whereupon, the referred to
23 question and answer was read back by
24 the Reporter.)

25 Q. Let's go back to the Exhibit 1

1 P. DELGENIO

2 at the third page which is labeled Exhibit
3 A and where it says "Plaintiffs seeks
4 testimony from Defendant's 30(b)(6)
5 witnesses on the following matters:"

6 Matter number three, "All
7 affirmative defenses asserted by Defendants
8 and or to be relied upon in any pleading up
9 to and including trial."

10 Do you see that statement?

11 A. Yes.

12 Q. Are you prepared to testify
13 regarding that subject?

14 A. Regarding all of the
15 affirmative defenses in this third document
16 that you just had me look at?

17 Q. Well, including but not limited
18 to that. It is all affirmative defenses
19 asserted by Defendants and or to be relied
20 upon in any pleading up to and including
21 trial.

22 A. I am prepared to testify to
23 anything that I know about.

24 Q. I respect your answer.

25 MR. ANDREWS: I will object for

1 P. DELGENIO

2 the record with respect to the
3 appropriateness of a 30(b)(6) witness
4 who has testified that she has not
5 seen the Notice of Deposition, not
6 seen the Complaint and not seen the
7 Answer and the affirmative defenses.
8 I believe that we do not have an
9 appropriate 30(b)(6) witness and I
10 want to make that objection clear for
11 the record, but again, I will
12 continue with the questioning.

13 MS. CHICLACOS: I will note in
14 response there has yet to be one
15 question that you asked the Witness
16 that she is unable to answer based on
17 the topics in the 30(b)(6) Notice.

18 MR. ANDREWS: I would like to
19 move on with the questioning and
20 limit exchanges with Counsel. I do
21 want to note for the record that the
22 Witness has testified that she has
23 not previously seen the Notice of
24 Deposition, the Plaintiff's Complaint
25 or the Defendant's Answer. We will

1 P. DELGENIO

2 proceed with the questions.

3 Q. Exhibit Number 3, Defendant's
4 Answer with Affirmative Defenses. I
5 understand it is your testimony that you
6 have not previously seen this document?

7 MS. CHICLACOS: Objection. It
8 doesn't say Answer within the
9 Deposition Notice.

10 MR. ANDREWS: Your objection is
11 noted.

12 Q. Again, I direct your attention
13 to Exhibit 3, the document that is entitled
14 Defendant's Answer with Affirmative
15 Defenses. Do you see that document?

16 A. Yes.

17 Q. Again, it is your testimony
18 that you have not previously seen this
19 document?

20 A. Correct.

21 Q. Thank you.

22 I would like to direct your
23 attention to page six of this document,
24 marked as Exhibit 3, where it says at the
25 very bottom, it says First Affirmative

1 P. DELGENIO

2 Defense.

3 A. Yes.

4 Q. Do you see that?

5 A. Yes.

6 Q. Have you seen this previously?

7 A. No.

8 Q. I would like to just turn to
9 page seven where it says Second Affirmative
10 Defense.

11 A. Yes.

12 Q. Have you seen that previously?

13 A. No.

14 Q. I would like you to take a look
15 at the next item, Third Affirmative
16 Defense. The next question, have you seen
17 that statement previously?

18 A. No.

19 Q. The answer is no?

20 A. No.

21 Q. I would like you to take a look
22 at the next one, Fourth Affirmative Defense
23 and ask you the same question?

24 A. No, I haven't seen the Fourth
25 Affirmative Defense.

1 P. DELGENIO

2 Q. Have you seen the Fifth
3 Affirmative Defense before?

4 A. No, I have not.

5 Q. Have you seen the Sixth
6 Affirmative Defense before?

7 A. No, I have not.

8 Q. Have you seen the Seventh
9 Affirmative Defense before?

10 A. No, I have not.

11 Q. Have you seen the Eighth
12 Affirmative Defense before?

13 A. No, I have not.

14 Q. On page eight, there are a
15 number of other affirmative defenses.
16 There is the Ninth, Tenth, Eleventh,
17 Twelfth, Thirteenth, Fourteenth and the
18 Fifteenth. Have you seen any of those
19 affirmative defenses previously?

20 A. No, I have not seen this
21 document or these affirmative defenses
22 previously.

23 Q. And finally on page nine, there
24 is a Sixteenth Affirmative Defense.

25 A. Yes.

1 P. DELGENIO

2 Q. Have you seen that affirmative
3 defense previously?

4 A. No, I have not.

5 Q. Thank you.

6 MR. ANDREWS: Again, we note
7 for the record that, at this time, we
8 believe that the Defendants have not
9 designated an appropriate 30(b)(6)
10 witness in response to the Deposition
11 Notice. That being said, I will
12 continue with the questions.

13 A. Can I just add to that?

14 Q. Well, there is no question
15 pending. I prefer that I ask the
16 questions.

17 A. Okay.

18 Q. But if you want to correct
19 something that you previously said.

20 A. I want to correct. I haven't
21 seen this document before, but I see what
22 you presented to me in Document 2.

23 Q. Yes.

24 A. That's all.

25 Q. Thank you.

1 P. DELGENIO

2 A. And one record is --

3 Q. Thank you. Just to be clear,
4 you also testified that you had not
5 previously seen Document 2?

6 A. Correct, that is correct.

7 Q. Do you know why Mr. Friedmann
8 is suing Raymour & Flanigan?

9 A. Yes.

10 Q. What is your understanding why
11 he is suing Raymour & Flanigan?

12 A. My understanding that he is
13 suing Raymour & Flanigan is because he
14 believes that we discriminated against him
15 on the basis of his age and his sciatica
16 condition.

17 Q. How did you learn of that?

18 MS. CHICLACOS: Objection. I
19 am instructing her not to answer as
20 it calls for the production of
21 attorney-client privilege
22 information.

23 Q. Are you, in your current
24 position, responsible for training other
25 Raymour & Flanigan employees regarding

1 P. DELGENIO

2 Human Resources policies and procedures?

3 A. Yes, I am responsible for that
4 function, yes.

5 Q. Do you train store managers?

6 A. Yes.

7 Q. How do you train store
8 managers?

9 A. There is a variety of different
10 trainings that I am ultimately responsible
11 for. I don't physically facilitate all of
12 the trainings myself.

13 Q. Do you conduct, do you
14 personally conduct any training?

15 A. I personally have conducted
16 every training in the HR suite.

17 Q. When you say "the HR suite" --

18 A. Any of the HR trainings that we
19 would provide, I have facilitated each and
20 every one. I don't currently in my
21 position facilitate each and every one
22 myself.

23 Q. When you say "the HR suite," I
24 understand you to mean training of other HR
25 professionals; is that correct?

1 P. DELGENIO

2 A. No. I mean training, anything
3 in the HR, the trainings that HR provides.

4 Q. What types of trainings does HR
5 provide?

6 A. HR provides new hire
7 orientation. HR provides professional
8 conduct and harassment awareness training.
9 HR provides management training,
10 communication, effective listening, on the
11 role of the supervisor assertive influence,
12 diversity and coaching. There are two or
13 three coaching workshops that the HR team
14 facilitates as part of the HR service that
15 we provide to our leaders.

16 Q. Have you ever trained Ms. Lucy
17 Goldstein?

18 A. Yes.

19 Q. Can you recall what training
20 you provided Ms. Lucy Goldstein?

21 A. Yes. I recall at least one
22 time where I facilitated a professional
23 conduct and harassment awareness refresher
24 training.

25 Q. Can you describe in summary

1 P. DELGENIO

2 form what that type of session would have
3 consisted of?

4 A. Sure. Each year we refresh
5 professional conduct and harassment
6 awareness training for our managers and the
7 training that I am thinking of now, Lucy
8 was present, it was either her second or
9 third time attending, and we talk about the
10 laws related to discrimination on the basis
11 of protected categories, age, race,
12 disability, family, marital status, now
13 sexual orientation, things of that matter.
14 We talk about third-party harassment, we
15 talk about quid pro quo, peer harassment,
16 we talk about hostile working environment.
17 Anything that would, I assume, customarily
18 would be included in sexual conduct and
19 sexual harassment workshop.

20 Q. Are store managers advised to
21 reach out to Human Resources if they have
22 questions?

23 A. Yes.

24 Q. How are they advised to do
25 that?

1 P. DELGENIO

2 A. At the end of any HR workshop,
3 if you have questions, if you have
4 concerns, if there is anything that you are
5 unsure about, feel freely to reach out to
6 any member of our team. Are numbers are
7 posted on the wall, as I stated previously.
8 You know, when we are in your location,
9 feel free to pull us aside, that is what we
10 are here for.

11 Q. If a store manager received a
12 complaint from an employee alleging some
13 form of prohibited discrimination and
14 didn't reach out to Human Resources, would
15 that be a violation of company policy?

16 A. Yes.

17 Q. To your knowledge, did Mr.
18 Friedmann ever complain to Ms. Goldstein
19 regarding any issues concerning his
20 employment during the time that he was
21 employed there?

22 A. Not to my knowledge, no.

23 Q. To your knowledge, did
24 Ms. Goldstein ever reach out to you or to
25 any one of your colleagues in HR regarding

1 P. DELGENIO

2 any complaints that Mr. Friedmann may have
3 made regarding his employment?

4 A. Not to my knowledge or
5 recollection, no.

6 Q. If such an effort to reach out
7 to you had been made, would that have been
8 documented in your files, in HR's files?

9 A. Customarily, yes.

10 Q. Would HR customarily have
11 conducted an investigation?

12 A. I have semantics. So
13 investigation is a very broad term. We
14 would of inquired, we would of sought to
15 find additional information, seek to
16 understand what the associate's concern
17 was, speak with the leadership team. So
18 yes, if a complaint came to HR from a store
19 manager or from an associate, we would
20 reach back out to try to better understand
21 the situation, gather some more
22 information.

23 Q. Would you meet with the
24 associate himself or herself who had made
25 the complaint?

1 P. DELGENIO

2 A. I personally or someone on the
3 HR team?

4 Q. Someone on the HR side?

5 A. Yes.

6 Q. In Mr. Friedmann's case, and I
7 understand that you testified that you are
8 not aware of any complaints that Mr.
9 Friedmann made while employed, but in Mr.
10 Friedmann's case, would it have been
11 Ms. Roland who would have fulfilled that
12 function had a complaint been made?

13 A. If a complaint would of been
14 made to her, she would of followed up on
15 it. Whoever the complaint goes to would be
16 the person who would follow-up on it.

17 Q. Would Ms. Roland be the person
18 that Ms. Goldstein would have gone to if
19 she had an issue that she needed to consult
20 with HR about?

21 A. It could have been Chris Roland
22 or it could have been myself.

23 Q. Has Ms. Goldstein ever reached
24 out to you or Ms. Roland regarding any
25 employee complaint?

1 P. DELGENIO

2 A. An employee complaint, no, not
3 to my recollection.

4 Q. Does Ms. Goldstein work with
5 the company any longer?

6 A. Yes. She is on leave of
7 absence, I believe.

8 Q. Do you know when she went on
9 leave of absence?

10 A. Last year.

11 Q. During the time when she was
12 actively employed, that is not including
13 the time that she was on leave of absence,
14 can you give me an estimate of how long you
15 overlapped with Ms. Goldstein as employees,
16 active duty employees?

17 A. She went out in 2011. It would
18 be my entire time there, 7, 8, 9, 10,
19 four years.

20 Q. Four years?

21 A. Four, five years.

22 Q. Is it your testimony in those
23 four years you are not aware of
24 Ms. Goldstein ever reaching out to anyone
25 in HR regarding an employee complaint?

1 P. DELGENIO

2 A. I can't recall.

3 Q. Do you recall any employees
4 under Ms. Goldstein's supervision
5 complaining to HR?

6 MS. CHICLACOS: I think that I
7 am going to object on the grounds
8 that this exceeds the scope of the
9 30(b)(6) Notice again. It doesn't
10 pertain to a policy. If you would
11 like to point me to an affirmative
12 defense in the Answer that you
13 believe this relates to, I will
14 reconsider, but it is beyond the
15 scope.

16 MR. ANDREWS: Just to respond
17 briefly, I will try to keep my
18 comments very brief, the Deposition
19 Notice which the Witness has
20 testified she has not previously seen
21 seeks in point one "All information
22 related to anti-discrimination
23 policies at Defendant, Raymour
24 Furniture Company, Inc."

25 The Plaintiffs feel that

1 P. DELGENIO

2 questions regarding complaints made
3 by employees regarding their managers
4 to Human Resources fall within the
5 scope of that category.

6 Secondly, with all due respect
7 to Ms. Chiclacos, the Witness has,
8 within the past few minutes,
9 testified that she has not previously
10 seen any affirmative defense asserted
11 by the Defendant in this matter, so I
12 don't know what else further to add
13 to that, but I would like to continue
14 with the questions and your objection
15 is noted for the record. I would
16 like to move on.

17 MS. CHICLACOS: Okay.

18 MR. ANDREWS: Can we have the
19 last question and answer read back,
20 please.

21 (Whereupon, the referred to
22 question and answer was read back by
23 the Reporter.)

24 MR. ANDREWS: There was an
25 instruction to not answer that

1 P. DELGENIO

2 question and do you stand by that
3 instruction to not answer?

4 MS. CHICLACOS: Yes.

5 MR. ANDREWS: I would like to
6 go off the record.

7 (Whereupon, an off-the-record
8 discussion was held.)

9 Q. Are you generally familiar with
10 the company's policies regarding employee
11 disability?

12 A. Yes.

13 Q. Do you participate in
14 formulating those policies?

15 A. I participate in the
16 administration of those policies. The
17 formulation I would say no.

18 Q. Do you know who formulates
19 those policies?

20 A. I would assume that it is in
21 conjunction with counsel as those policies
22 are saved in the Associate Handbook, so the
23 same process would apply.

24 Q. You used the word before, I
25 don't want to misstate what you said, you

1 P. DELGENIO

2 stated before that you participate in the
3 administration of those policies?

4 A. The administration of the
5 disability policies?

6 Q. Yes.

7 A. Yes, or the oversight of the,
8 you know, how they are carried out.

9 Q. I will use the word
10 administration for now. That's okay. How
11 are you trained in how to administer those
12 policies?

13 A. How am I personally trained in
14 how to administer those policies? Frankly,
15 my years of experience in the HR field and
16 all of the training and experience that I
17 have had to date, conferring with counsel
18 if I have questions or clarifications that
19 need to be made to the policy, that I
20 oversee and administer the following of the
21 policy. So specific training, I can't tell
22 you.

23 Q. And your supervisor, the
24 overall head of human resources is Mr.?

25 A. McPeak.

1 P. DELGENIO

2 Q. McPeak. Does he provide you
3 with input on the administration of those
4 policies?

5 A. Yes.

6 Q. How does he do that?

7 A. If I was to confer with him
8 that I needed additional support or
9 resources to help me determine how to
10 administer a policy or situation that I was
11 specifically working with, I might reach
12 out to Steve or to counsel to make sure
13 that we are following through in the
14 appropriate fashion.

15 Q. When you become aware one way
16 or the other that an employee, such as a
17 sales associate, is temporarily disabled,
18 what is the process for dealing with that?

19 A. Temporarily disabled, meaning
20 that they are out of work?

21 Q. Let's start with that.

22 A. An associate is out of work, I
23 would determine the reason why, the amount
24 of time that they need to be out of work,
25 if they were eligible for any -- entitled

1 P. DELGENIO

2 leaves, family medical leaves and the
3 paperwork associated, health care
4 certifications associated with those leaves
5 to determine the amount of leave that they
6 are entitled to.

7 Q. If it is a situation where the
8 employee is able to report to work, but is
9 requesting some modification in his
10 schedule, how is that handled?

11 A. They would let their manager
12 know that they need an accommodation or a
13 schedule adjustment based on whatever
14 condition they are managing at the time.
15 If the store manager has questions about
16 being able to make those adjustments or
17 accommodations, they reach out to the Human
18 Resource team and we would help them
19 determine what accommodations can and
20 should be made.

21 Q. If a manager did not reach out
22 to your team, would that be a violation of
23 company policy?

24 A. Yes, they should reach out.
25 They should reach out if they feel they are

1 P. DELGENIO

2 not able to make the accommodation or the
3 adjustment. If they are able to make the
4 accommodation or adjustment, then they do
5 it.

6 Q. Is any type of documentation
7 required of managers in those situations?

8 A. No, no specific documentation.

9 Q. If a manager feels that he or
10 she is unable to make the adjustment or
11 accommodation, is any documentation
12 required of that?

13 A. No.

14 Q. So if a manager refused to
15 accommodate an employee and didn't reach
16 out to Human Resources, you would have no
17 way to know that that request had been
18 made?

19 A. Unless the associate themselves
20 reached out to Human Resources. If the
21 manager didn't tell us, we wouldn't know.
22 If the associate didn't tell us, we
23 wouldn't know.

24 Q. Is it fair to say that if Mr.
25 Friedmann was having an issue with Ms.

1 P. DELGENIO

2 Goldstein and neither of them reached out
3 to Human Resources, Human Resources would
4 not necessarily know even the existence of
5 such issues?

6 A. I think that is fair.

7 MR. ANDREWS: I would like to
8 mark as Exhibit 4 a two-page
9 document.

10 (Whereupon, the aforementioned
11 document was marked as Plaintiff's
12 Exhibit 4 for identification as of
13 this date by the Reporter.)

14 (Whereupon, a lunch recess was
15 taken from 1:25 to 2:10 p.m.)

16 Q. Back on the record after lunch.

17 We were about to talk about an
18 exhibit which I marked as Plaintiff's
19 Exhibit 4, which is an October 11, 2011
20 document. I will ask the Witness to review
21 that and I will have some questions for
22 you.

23 Have you ever seen this
24 document previously?

25 A. Not this specific document, no.

1 P. DELGENIO

2 Q. Did anyone discuss with you the
3 preservation of documents relating to Mr.
4 Friedmann's employment?

5 A. Yes.

6 Q. Do you recall when that
7 discussion took place?

8 A. In conjunction with my being
9 advised that there was a case, which was
10 probably shortly after counsel advised,
11 found out, whenever that was.

12 Q. Without disclosing any
13 attorney-client communication, do you have
14 an understanding of what documents you are
15 supposed to retain?

16 A. Anything, e-mails, any hard
17 copies, anything related to discussion of
18 the associate's performance or anything at
19 all related to the associate's time with
20 us.

21 Q. Did you follow those
22 instructions?

23 A. Yes.

24 MR. ANDREWS: To the extent any
25 of those documents have not yet been

1 P. DELGENIO

2 already produced, we call for their
3 production at the earliest
4 convenience of the Defendants.

5 I would like to just move on.

6 Q. Do you have an understanding in
7 what form these materials would be
8 preserved in, what medium?

9 A. Mostly e-mails I guess would be
10 the only thing that I would have, that I
11 specifically would have had, but I am not
12 sure I exactly understand your question.

13 Q. Well, what types of materials
14 do you have in Mr. Friedmann's file in
15 Human Resources?

16 MS. CHICLACOS: Objection to
17 the form.

18 A. Well, the Human Resources
19 personnel files are maintained in our
20 central services area in Liverpool, so I
21 don't maintain his personnel file.

22 Q. Have you ever seen his
23 personnel file?

24 A. I don't recall seeing his
25 personnel file.

1 P. DELGENIO

2 Q. Do you use a BlackBerry or
3 iPhone at work?

4 A. Yes.

5 Q. Are communications retained on
6 those devices that you receive from
7 Ms. Roland?

8 MS. CHICLACOS: Objection to
9 form.

10 Q. Does Ms. Roland communicate
11 with you using e-mail and text messages?

12 A. Yes.

13 Q. How do you retain those e-mails
14 and text messages?

15 A. Well, the e-mails are on the
16 company server, so they are maintained
17 through the normal course of how the
18 company archives e-mails, and I don't
19 believe that I had my phone at the time
20 that I would of had any communication about
21 Larry Friedmann, so I don't know.

22 Q. Would you have had another type
23 of device, such as a BlackBerry?

24 A. I would of had -- I did not
25 have a BlackBerry. I did not have e-mail

1 P. DELGENIO

2 on my phone until got an iPhone, which was
3 probably a year and a half ago.

4 MR. ANDREWS: We are up to 5.

5 I would like to introduce as
6 Plaintiff's Exhibit 5 a document.

7 MS. CHICLACOS: I am going to
8 object at this point and to instruct
9 the Witness not to even look at this
10 document. Again, showing her this,
11 it is beyond the scope of the
12 30(b)(6) Notice. If you would like
13 to wait until the judge calls us, but
14 she is not going to look at the
15 exhibit at this point.

16 MR. ANDREWS: We understand
17 your instruction to the Witness. I
18 will do my best to keep my comments
19 brief.

20 The Notice of Deposition, which
21 was marked as Exhibit 1, which the
22 Witness testified that she had not
23 previously seen, sought from the
24 Defendant's 30(b)(6) witness
25 testimony regarding all affirmative

1 P. DELGENIO

2 defenses asserted by Defendants and
3 or to be relied upon in any pleading
4 up to and including trial.

5 Up to this point in the
6 deposition, the Plaintiffs note that
7 the witness designated as the
8 30(b)(6) witness has testified that
9 she has not seen her Notice of
10 Deposition previously, she has not
11 seen Plaintiff's Complaint
12 previously, she has not seen
13 Defendant's Answers with Affirmative
14 Defenses previously, could not
15 recognize any of the Defendant's
16 affirmative defenses and now that I
17 have introduced Defendant's Responses
18 and Objections to Plaintiff's First
19 Set of Document Requests, which
20 include responses and objections, the
21 Defendant's Counsel has now
22 instructed the Witness to not even
23 look at the document.

24 For these reasons, the
25 Plaintiffs again reiterate that we do

1 P. DELGENIO
2 not feel that the Witness is a proper
3 30(b)(6) witness. We also feel that
4 Counsel has improperly interfered
5 with the taking of this 30(b)(6)
6 deposition. That being said, I would
7 like to continue with the deposition,
8 unless you wanted to say something on
9 the record.

10 MS. CHICLACOS: No.

11 MR. ANDREWS: I understand
12 Jessica is not going to let the
13 Witness see it, but I want it marked
14 as Exhibit 5.

15 (Whereupon, the aforementioned
16 document was marked as Plaintiff's
17 Exhibit 5 for identification as of
18 this date by the Reporter.)

19 Q. Ms. Delgenio, have you reviewed
20 any pleadings in this case?

21 MS. CHICLACOS: Objection to
22 the form.

23 Q. Let me go back for a second.
24 Do you know what a pleading is?

25 A. That is what I was going to ask

1 P. DELGENIO

2 you to clarify.

3 Q. A pleading is a document
4 prepared by attorneys, either the attorneys
5 for the Plaintiff or the attorneys for the
6 Defendant in the litigation, in this
7 litigation, Friedmann versus Raymour
8 Furniture Company. Do you now understand
9 what a pleading is?

10 A. Yes.

11 Q. Based on that understanding,
12 have you previously reviewed any pleadings
13 in this case?

14 A. No, I have not previously
15 reviewed any pleadings in this case.

16 Q. Either prepared by Defendants
17 or by Plaintiffs?

18 A. By neither.

19 Q. Did you discuss your deposition
20 with Counsel during lunch today?

21 A. No.

22 Q. Thank you.

23 MR. ANDREWS: Let me just get
24 my copies ready. I would like to
25 introduce as Plaintiff's Exhibit 6 a

1 P. DELGENIO

2 two-page document by Defendants,
3 D000039 and D000040.

4 (Whereupon, the aforementioned
5 document was marked as Plaintiff's
6 Exhibit 6 for identification as of
7 this date by the Reporter.)

8 Q. I would like you to review this
9 document and I will have some specific
10 questions for you.

11 A. Okay.

12 Q. Do you recognize what this
13 document is?

14 A. Yes.

15 Q. Can you tell me what this
16 document is?

17 A. It is a Coaching For Success
18 Form.

19 Q. Is it for Mr. Friedmann?

20 A. Yes, it is a Coaching For
21 Success Form for Larry Friedmann.

22 Q. The date on this is May 7,
23 2011; is that correct?

24 A. Yes.

25 Q. It is the Plaintiff's

1 P. DELGENIO

2 contention in this case that Mr. Friedmann
3 was terminated in approximately August of
4 2011?

5 A. Did I say July 18th? Is that
6 what you said? Sorry.

7 Q. Let me refresh my recollection.

8 A. Or June?

9 Q. Earlier today I asked you if
10 you remembered when Mr. Friedmann was
11 terminated and you didn't recall the
12 specific date and I asked you whether if I
13 tell you it was June 18, 2011, you would
14 disagree and you said that that may be the
15 correct date.

16 MS. CHICLACOS: Objection to
17 the form.

18 Q. Is that correct?

19 MS. CHICLACOS: Objection to
20 the form.

21 Q. Let me rephrase the question.

22 It is the Plaintiff's
23 contention that Mr. Friedmann was
24 terminated on June 18, 2011. Do you have
25 any specific reason to believe that that is

1 P. DELGENIO

2 not the correct date on which he was
3 terminated?

4 A. No.

5 MS. CHICLACOS: Objection to
6 the form.

7 Q. You testified that you first
8 were advised that Mr. Friedmann was on a
9 Coaching For Success Plan several weeks
10 prior to his termination and I believe that
11 you testified that it was roughly eight
12 weeks, six to eight weeks?

13 A. I think I said four to six.

14 Q. Four to six weeks. Do you
15 recall seeing this particular document
16 previously?

17 A. I don't recall seeing this
18 particular document at this time.

19 Q. You don't recall, okay. Is
20 this the type of document that would have
21 been brought to your attention?

22 A. These documents, I am not sure.
23 I don't recall reviewing the document. I
24 believe I was made aware that a document
25 was created and administered, I believe I

1 P. DELGENIO

2 was advised that by Chris Roland.

3 Q. But you don't know if it was
4 this document?

5 A. I don't know if it was this
6 document. There are signatures on the
7 document that leads me to believe that it
8 was this document.

9 MR. ANDREWS: I would like to
10 mark as Exhibit 7 a two-page
11 document, D000043 and D000044.

12 (Whereupon, the aforementioned
13 document was marked as Plaintiff's
14 Exhibit 7 for identification as of
15 this date by the Reporter.)

16 MR. ANDREWS: I am sorry. I
17 stand corrected. It is a three-page
18 document. D000045.

19 A. Okay.

20 Q. Do you know what this document
21 is?

22 A. It is an Action Plan for Larry
23 Friedmann. It looks like it was
24 administered on 6/13/11.

25 Q. Do you recall seeing this

1 P. DELGENIO

2 document previously?

3 A. No.

4 Q. Is this the type of document
5 that would have been forwarded to you in
6 the course of your duties?

7 A. It could be, but not something
8 that as a matter of course we review each
9 and every one. We don't review each and
10 every Action Plan for each and every
11 associate.

12 Q. Do you receive each and every
13 Action Plan for each associate?

14 A. Not always. Sometimes they are
15 forwarded directly up to our central
16 services area in Liverpool for filing.

17 Q. Do you know if anyone reviews
18 them in Liverpool?

19 A. Not to my knowledge.

20 Q. So it is your testimony that a
21 manager could generate performance Action
22 Plans that would not be reviewed by anyone
23 else?

24 MS. CHICLACOS: Objection to
25 the form.

1 P. DELGENIO

2 A. It is possible.

3 Q. What are the exhibit numbers?

4 A. This is 7 and this is 6.

5 Q. Is it possible that Exhibits 6
6 and 7 were never reviewed by anyone other
7 than Ms. Goldstein?

8 A. It is possible.

9 Q. I would like to switch
10 direction for a moment and go back to the
11 Deposition Notice, Exhibit Number 1. I
12 will get my copy.

13 Exhibit Number 1, I direct you
14 to the third page which says "Exhibit A,
15 Testimony Sought by Plaintiff from
16 Witnesses pursuant to Federal Rule of Civil
17 Procedure 30(b)(6). Plaintiffs seeks
18 testimony" and, point one, "All information
19 related to anti-discrimination policies at
20 Defendant, Raymour Furniture Company,
21 Incorporated."

22 To your knowledge, does the
23 Defendant, Raymour Furniture Company,
24 Incorporated, maintain anti-discrimination
25 policies?

1 P. DELGENIO

2 A. Yes.

3 Q. How are those policies
4 maintained?

5 A. The policies are maintained,
6 they exist in the Associate Handbook and
7 they are maintained through the leadership
8 and the field leadership in conjunction
9 with the Human Resources department.

10 Q. Apart from the employee
11 handbooks which are disseminated through
12 employees, do members of the HR department
13 maintain anti-discrimination policies in
14 their offices?

15 A. Do you mean that they maintain
16 copies of the anti-discrimination policy?

17 Q. Well, let me ask a different
18 question that hopefully is clearer.

19 You testified that in part,
20 anti-discrimination policies are
21 articulated in the employee handbooks which
22 are disseminated to employees?

23 A. Yes.

24 Q. You also testified that
25 anti-discrimination policies are developed

1 P. DELGENIO

2 by the company's leadership?

3 A. Yes.

4 Q. And maintained by management as
5 well as by persons in the Human Resources
6 function?

7 A. Yes.

8 Q. Is that your testimony?

9 A. Yes.

10 Q. Apart from the employee manuals
11 that are disseminated to employees, are
12 there other written anti-discrimination
13 policies that are maintained within the
14 company?

15 A. Well, the leaders get a copy of
16 our anti-discrimination policy,
17 non-harassment policy I believe in their
18 take-away materials from the professional
19 conduct and harassment training that they
20 go to each year. I also believe that we
21 have as part of required postings in each
22 break room anti-harassment -- I don't know
23 if it is policy or if it is law, in our
24 five in one posters, our State required
25 posters in each location.

1 P. DELGENIO

2 Q. When you say in your last
3 answer, when you say leadership or leaders,
4 who are you referring to?

5 A. One who has an associate
6 directly reporting to them has a
7 responsibility to uphold our
8 anti-discrimination policies.

9 Q. So any employee responsible for
10 supervising any other employee has
11 materials other than the standard employee
12 handbook?

13 MS. CHICLACOS: Objection to
14 the form.

15 A. If they attended the
16 professional conduct and harassment
17 awareness training, they would of gotten
18 collateral materials that reiterate our
19 anti-harassment and anti-discrimination
20 policies.

21 Q. Do you maintain copies of those
22 materials in your office?

23 A. Copies like in a file cabinet,
24 copies of those? I am not sure of your
25 question.

1 P. DELGENIO

2 Q. Well, you testified that you
3 disseminate collateral materials to leaders
4 at training sessions?

5 A. Yes.

6 Q. Do you maintain copies of those
7 collateral materials in your office?

8 A. No. Those are maintained in
9 the HR share drive and we create them as
10 needed, but I don't maintain copies.

11 MR. ANDREWS: We call for the
12 production of those documents during
13 the course of the litigation at the
14 Defendant's earliest convenience.

15 MS. CHICLACOS: They were
16 previously produced, Peter.

17 Q. These collateral materials that
18 you used, that you and your colleagues in
19 HR used to train employees or supervisor
20 employees, who develops those collateral
21 materials?

22 A. They are developed in
23 conjunction with counsel by the HR team.

24 Q. Are you a member of the HR
25 team?

1 P. DELGENIO

2 A. Yes, I am.

3 Q. Do you participate in
4 developing those collateral materials?

5 A. Yes.

6 Q. Are the collateral materials
7 periodically updated?

8 A. Yes.

9 Q. Are they updated annually?

10 A. I would say they are reviewed
11 annually and updated as necessary.

12 Q. When they are disseminated to
13 leadership employees, do leadership
14 employees have to sign for their receipt?

15 A. They sign an acknowledgment
16 that they attended the workshop, the
17 training.

18 Q. Do you recall if Lucy Goldstein
19 attended these sessions?

20 A. Yes.

21 Q. Do you recall how many sessions
22 she attended?

23 A. My guess would be three or
24 four.

25 Q. Can you articulate what

1 P. DELGENIO

2 specific areas these collateral materials
3 on anti-discrimination cover?

4 A. Sure. We talk about race, age,
5 ethnicity, country of origin, sexual
6 orientation, marital status, family status,
7 disability, and then, you know, we talk
8 about the different forms of sexual
9 harassment that I referenced earlier.

10 Q. Have you, yourself, ever been
11 involved in a situation where an employee
12 of the company complained of a violation of
13 the anti-discrimination policies?

14 A. Yes.

15 Q. Do you recall how many times
16 that happened?

17 A. That I was directly involved
18 in?

19 Q. Yes, that you were directly
20 involved in?

21 A. I have been there for seven
22 years. I am trying to scan the scope of my
23 entire tenure. I would say ten or less,
24 that I can recall.

25 Q. Your best estimate is what I

1 P. DELGENIO

2 was seeking.

3 A. Less than ten.

4 Q. These were instances where an
5 employee felt that a violation of an
6 anti-discrimination policy had taken place?

7 A. Yes, or some other type of
8 harassment.

9 Q. We are now talking about
10 matters that you were involved with?

11 A. Yes.

12 Q. Could you describe in general
13 your approach for responding to such
14 allegations?

15 A. Sure. If the person came
16 directly to me or if the person came
17 through someone on my team?

18 Q. Let's start with you first.

19 A. Okay. If the person came
20 directly to me, via a voicemail, I would
21 return the call and try to understand
22 during that initial call the sense of
23 urgency, the sense of severity of the
24 person's claims or experience. After that,
25 I would likely schedule a face-to-face

1 P. DELGENIO

2 meeting with the person at a time that is
3 mutually convenient.

4 I would then reach out to my HR
5 field team member to see if they knew
6 anything about it. Had the person come to
7 them, were they aware that there was
8 anything going on. I would reach out to my
9 leader and I would say, hey, I have this
10 going on, I am going to follow-up with this
11 person and meet with them on this date. I
12 would reach out to counsel and say, hey, I
13 have a person who is claiming whatever they
14 are claiming, this is my understanding from
15 my HR field team of anything that I should
16 know before going in and being with this
17 person, vis-à-vis, these are questions that
18 I intend to ask them. Do you have any
19 insight or guidance related to that? I
20 would proceed with the meeting, meet with
21 the person, get more information, seek to
22 understand in more detail, weigh that
23 against our anti-discrimination policy. If
24 there is a need to meet with additional
25 people who may have witnessed, I meet with

1 P. DELGENIO

2 those people. I would likely meet with the
3 person who is alleged to have engaged in
4 unlawful conduct. Last, once I gathered
5 all of my information and then, you know,
6 reconvene with counsel, come to a
7 determination and make a recommendation for
8 action.

9 Q. Would your recommendation for
10 action be in writing?

11 A. In some cases, yes. Not
12 always.

13 Q. I would like to come back to
14 that in a moment, but can you just tell me
15 how, if at all, the process would be
16 different if the complaint was coming to
17 you, from someone who reported to you?

18 A. Most of the difference would be
19 the person who reported to me would be
20 letting me know. If the person came to
21 them, I would ask them the same questions,
22 try to understand the history, try to
23 understand the dynamic. Either I, myself,
24 or I would direct them or advise them to
25 reach out to counsel to get additional

1 P. DELGENIO

2 advice. If it comes to me, I own it. If
3 it comes to someone on my team, I endeavor
4 to have them own it for as long as it makes
5 sense.

6 Q. Do you recall any instances
7 that you were directly involved with in
8 which you recommended that disciplinary
9 action be taken because of a violation of
10 anti-discrimination policy?

11 A. With a leader? To a leader?

12 Q. Let's start with leaders.

13 MS. CHICLACOS: I am going to
14 object here. This falls within the
15 scope of the discovery disputes
16 currently before Magistrate Tomlinson
17 and beyond the scope of her
18 Deposition Notice. So absent a Court
19 ruling on that issue, I am going to
20 instruct the Witness not to answer,
21 specifically referring to the
22 category of documents that you are
23 seeking about complaints filed
24 internally against Raymour & Flanigan
25 in connection with that dispute.

1 P. DELGENIO

2 MR. ANDREWS: Again, I will
3 keep my comments brief. I note that
4 I have been impeded in taking this
5 deposition in various ways. I
6 strongly disagree with the suggestion
7 that my questions go beyond the scope
8 of the Deposition Notice. The
9 Deposition Notice clearly states all
10 information related to
11 anti-discrimination policies at
12 Defendant, Raymour Furniture Company,
13 Inc.

14 I have now asked the Witness to
15 testify regarding specific instances
16 that she was personally involved with
17 where allegations of
18 anti-discrimination events took place
19 that resulted in discipline or
20 recommendation of discipline, and if
21 I understand correctly, Ms. Chiclacos
22 is directing the Witness to not
23 respond to such questions.

24 MS. CHICLACOS: Correct.

25 MR. ANDREWS: Again, that is

1 P. DELGENIO

2 for the record. I don't want to
3 waste time. Now we will move on, but
4 again, we feel that we are not being
5 allowed to take a 30(b)(6) deposition
6 and that will be taken up with the
7 Court at an appropriate time.

8 Q. I would like to move to point
9 two of the Deposition Notice, Exhibit A,
10 "All information related to disabilities
11 and accomodation of disabilities in the
12 workplace at Defendant, Raymour Furniture
13 Company."

14 My first question is: Does the
15 company maintain policies regarding
16 disabilities and accommodation of
17 disabilities?

18 A. Can you repeat the question?

19 Q. Sure, sure.

20 Does your company maintain
21 policies related to employee disabilities
22 and accommodation of those disabilities in
23 the workplace?

24 A. The company maintains policies,
25 anti-discrimination policies related to

1 P. DELGENIO

2 associates with disabilities, period.

3 Q. Do those policies encompass
4 procedures or policies for accommodating or
5 conditions under which persons with
6 disabilities might be accommodated?

7 A. I don't have knowledge of
8 specific processes that must be followed
9 related to accommodations related to
10 disabilities, other than I stated
11 previously, if an associate goes to a
12 leader with a request for an accommodation,
13 they try to do it first and if they can't
14 do it, then they, you know, loop us in,
15 then we see how we can try to do it.

16 Q. Have you, yourself, ever been
17 involved in a situation where a leader was
18 unable to accommodate an employee with a
19 disability?

20 A. I don't know that -- I am
21 uncomfortable with the question, unable to.
22 Maybe I use that word, you use that word.
23 Can you clarify for me?

24 Q. I will change the question. I
25 will strike the question and ask a

1 P. DELGENIO

2 different question.

3 Were you ever involved in a
4 situation where an employee reached out to
5 Human Resources and complained that he had
6 requested, he or she had requested an
7 accommodation, which his leader had not
8 been able to grant?

9 A. A disability-based
10 accommodation?

11 Q. That's correct.

12 A. I don't recall that, no.

13 Q. Do you recall ever intervening
14 in a dispute between a leader and an
15 employee regarding a proposed or requested
16 accommodation based on a disability?

17 MS. CHICLACOS: Objection to
18 the form.

19 A. A dispute between a leader and
20 associate based on the associate's request
21 for accommodation for disability, contacted
22 by the associate, no, I don't recall.

23 Q. Do you recall being contacted
24 by a leader?

25 A. Yes, that has happened.

1 P. DELGENIO

2 Q. Just to be clear, we are
3 talking about situations where leaders
4 contacted you because they had been unable
5 to resolve a request from an employee
6 regarding an accommodation?

7 A. Because they wanted guidance as
8 to whether it was an appropriate request or
9 a request that created an undue hardship to
10 the company if it was or if it were to be,
11 if the accommodation was to be made, so in
12 that circumstance, yes.

13 Q. You recall leaders reaching out
14 to you for that input?

15 A. Yes.

16 Q. How many times did that happen?

17 A. I would say less than 20.

18 Q. Less than 20?

19 A. As an estimate.

20 Q. This would have been between
21 2005?

22 A. 2006.

23 Q. 2006 and the present day?

24 A. Yes.

25 Q. Can you describe for me in a

1 P. DELGENIO

2 general sense when you did receive such a
3 request for guidance from a leader in that
4 type of situation, how you would respond?

5 A. You know, if we are using the
6 word disability loosely, if someone has a
7 health condition that they are managing and
8 they come to their leader and say something
9 to the effect of I can only stand for a
10 certain period of time, I have to sit for a
11 certain period of time. However, a
12 function of a sales associate requires,
13 technically requires that they be on their
14 feet for a long period of time, a leader
15 might call and say, hey, can I do this
16 because we don't allow associates to sit
17 while they are waiting for the next guest
18 to come in, it is not part of the brand
19 that we want to present, then I would say
20 something to the effect of, well, okay,
21 maybe for this person they can sit for ten
22 minutes or go into the sales office and
23 when the customer comes in, then they can
24 come out and greet the guest so the guest
25 doesn't see them sitting as they are coming

1 P. DELGENIO

2 in through the showroom doors.

3 So we engage in a dialogue
4 about how we could best accommodate the
5 associate and still meet the needs of the
6 business.

7 Q. Now, you said before for this
8 person.

9 A. I am sorry.

10 Q. You used the phrase for this
11 person?

12 A. Yes.

13 Q. Can you elaborate on why the
14 analysis would be different for different
15 employees?

16 MS. CHICLACOS: Objection to
17 the form.

18 A. I didn't mean to infer that
19 that was the case. It wouldn't necessarily
20 be different for different employees.

21 Q. Do you recall instances that
22 you were involved with where you were not
23 able to successfully accommodate the
24 request?

25 MS. CHICLACOS: I am going to

1 P. DELGENIO

2 object as falling within the scope of
3 the issues currently before
4 Magistrate Tomlinson.

5 MR. ANDREWS: You are
6 instructing the Witness to not answer
7 the question?

8 MS. CHICLACOS: Yes.

9 MR. ANDREWS: Again, for the
10 record, we feel this impedes our
11 ability to take a 30(b)(6) deposition
12 of all information related to
13 disabilities and accommodation of
14 disabilities in the workplace at
15 Defendant, Raymour Furniture Company,
16 Inc. We reserve the right to request
17 that this or another 30(b)(6)
18 deposition be reopened when such
19 matters can be inquired into.

20 Can we take a one-minute break?

21 MS. CHICLACOS: Sure.

22 (Whereupon, a short recess was
23 taken.)

24 Q. When you reached an opinion or
25 a recommendation as to how to accommodate a

1 P. DELGENIO

2 disability-related request, how do you
3 communicate that to leaders who have sought
4 your input?

5 A. Either over the phone or in
6 e-mail, dependant on how we were
7 communicating with that particular case.

8 Q. Do you not maintain a record of
9 your recommendation or decision in your
10 files?

11 MS. CHICLACOS: Objection to
12 the form. You can answer, if you
13 can.

14 A. I do not maintain. I do not
15 always maintain a record of a
16 recommendation that I give.

17 Q. Have there been instances where
18 you have sought guidance from your
19 supervisors with respect to such issues?

20 A. Yes.

21 Q. Have you received input from
22 them on those occasions?

23 A. Consultation, input, guidance
24 from my leader and from counsel.

25 Q. Do you recall any instances in

1 P. DELGENIO

2 which an employee sued the company alleging
3 that a disability-related request for an
4 accommodation could not be reached?

5 MS. CHICLACOS: Objection.

6 This is squarely within the issues
7 currently pending in your motion to
8 compel before Magistrate Tomlinson
9 and I am instructing the Witness not
10 to answer.

11 Q. Have you, yourself, ever had to
12 terminate an employee?

13 A. At Raymour & Flanigan?

14 Q. Yes.

15 A. Yes.

16 Q. Do you recall how many times
17 that took place?

18 A. An associate on my team or
19 where I participated in the termination of
20 an associate?

21 Q. We will take both.

22 MS. CHICLACOS: Unfortunately I
23 am going to have to object. This
24 doesn't fall within the scope of the
25 30(b)(6) Notice which is limited to

1 P. DELGENIO
2 anti-discrimination policies,
3 disabilities and accommodation and
4 affirmative defenses. I am
5 instructing the Witness not to
6 answer. You can wait for the Court
7 to call for a ruling on that.

8 MR. ANDREWS: Again, we
9 respectfully disagree. The Witness
10 is an HR professional who has been
11 designated in response to our
12 30(b)(6) Notice. Her procedures and
13 practices for terminating employees
14 are proper we feel areas of
15 examination. We understand
16 Ms. Chiclacos has instructed the
17 Witness not to answer. I will do my
18 best to ask some additional
19 questions, although we will see what
20 happens.

21 Q. Do you recall participating in
22 the termination of an employee who had
23 alleged a violation of anti-discrimination
24 policy?

25 MS. CHICLACOS: Objection. It

1 P. DELGENIO
2 falls outside of the scope of the
3 30(b)(6) Notice. The Notice is
4 limited to the anti-discrimination
5 policy, not termination of employees.

6 MR. ANDREWS: We believe that
7 the termination of employees
8 complaining about discrimination fall
9 within the scope of all information
10 related to anti-discrimination
11 policies, however, we understand you
12 are directing the Witness not to
13 answer.

14 Q. Have you ever participated in a
15 termination of an employee who alleged that
16 the company had failed to accommodate a
17 disability?

18 MS. CHICLACOS: Same objection.
19 The Witness is instructed not to
20 answer. The question is outside of
21 the scope of the 30(b)(6) Notice.

22 Q. You testified earlier that you
23 had never seen a pleading in this
24 litigation; is that correct?

25 A. Correct.

1 P. DELGENIO

2 Q. Have you ever participated in
3 the preparation of a pleading in this
4 litigation?

5 A. No.

6 Q. Your current position again is
7 vice president Human Resources field
8 services?

9 A. Correct.

10 Q. How many other people within
11 Raymour & Flanigan hold that position, to
12 your knowledge?

13 A. One.

14 Q. One other person?

15 A. Yes.

16 Q. Do you know where that other
17 person is located?

18 A. She is in the Philadelphia
19 region.

20 Q. You are the only person who
21 holds that position in the Tristate, New
22 York Metropolitan region?

23 A. Not Tristate. Not Connecticut.
24 I have New York and New Jersey.

25 Q. Does someone hold that position

1 P. DELGENIO

2 in Connecticut?

3 A. There is an HR director in
4 Connecticut.

5 Q. How is the position of an HR
6 director different than the position that
7 you hold?

8 A. Scope.

9 Q. How is the scope?

10 A. Volume. It is a significantly
11 greater amount of locations and associates,
12 my role.

13 Q. Your role has a greater number
14 of associates and locations?

15 A. Yes.

16 Q. Currently how many stores do
17 you oversee?

18 A. 29.

19 Q. Do you know how many employees
20 roughly?

21 A. About 1750.

22 Q. 17?

23 A. 50. 1,750.

24 Q. Of those employees, do you know
25 how many are management employees?

1 P. DELGENIO

2 A. I want to say 200 is the number
3 that comes to mind.

4 Q. You testified that Ms. Roland
5 reports to you and her position is a?

6 A. HR field specialist.

7 Q. How many HR field specialists
8 do you have reporting to you?

9 A. Five.

10 Q. Do they each cover different
11 geographic locations?

12 A. Correct.

13 Q. Does anyone report to them?

14 A. No.

15 Q. Are you responsible for hiring
16 them?

17 A. Yes.

18 Q. Are you responsible for
19 training them?

20 A. Yes.

21 Q. Evaluating them?

22 A. Yes.

23 Q. Have you, yourself, taken
24 courses in anti-discrimination laws?

25 A. Yes, I have been -- I didn't

1 P. DELGENIO

2 renew it. I had my PHR certification.

3 MR. ANDREWS: I am sorry. Off
4 the record.

5 (Whereupon, an off-the-record
6 discussion was held.)

7 (Whereupon, Magistrate
8 Tomlinson gave a ruling via
9 conference call.)

10 MAGISTRATE TOMLINSON: Whose
11 application is it? I understand you
12 are in the midst of a rule 30(b)(6)
13 deposition of the Defendant's
14 representative and it is about the
15 scope of a line of questioning, and
16 so I don't know whose application
17 this is, but whoever it is, you
18 certainly can proceed.

19 MR. ANDREWS: Thank you, Your
20 Honor. This is Peter Andrews
21 representing the Plaintiff, Larry
22 Friedmann. We called earlier today
23 and actually we have had a number of
24 issues arise in this 30(b)(6)
25 deposition. The 30(b)(6) deponent,

1 P. DELGENIO

2 who has been excused from the room,
3 is a Human Resources professional at
4 the Defendant's organization. The
5 specific issues that I had were that
6 the Witness has testified that she
7 has, A, not seen previously her
8 Notice of Deposition, B, has not
9 previously seen the Complaint in this
10 matter and, C, has not previously
11 seen the Defendant's Answer and
12 Affirmative Defenses.

13 The Notice of Deposition that
14 we served seeks, and I am reading
15 from it, "Plaintiffs seek testimony
16 from Defendant's 30(b)(6) witnesses
17 on the following matters:" And there
18 is three matters listed.

19 Item number three is "All
20 affirmative defenses asserted by
21 Defendants and or to be relied upon
22 in any pleading up to and including
23 trial."

24 I believe, and I may need the
25 Court Reporter's assistance, I

1 P. DELGENIO

2 believe when we initially called the
3 Court, it was at the point where I
4 had introduced the Complaint as an
5 exhibit to the deposition and Counsel
6 for the Defendant objected to me
7 asking the Witness questions about
8 the allegations in the Complaint. I
9 asked the Court Reporter to mark that
10 area previously. Do you have that
11 section marked? We will get you the
12 exact point at which that happened.

13 MAGISTRATE TOMLINSON: That's
14 fine.

15 MR. ANDREWS: Then I will be
16 quiet and let Counsel for the Defense
17 speak for herself.

18 (Whereupon, the referred to
19 testimony was read back by the
20 Reporter.)

21 MS. CHICLACOS: Jessica
22 Chiclacos for the Defendant. I will
23 try to be brief.

24 MAGISTRATE TOMLINSON: First of
25 all, you have to slow down. I do

1 P. DELGENIO

2 want to ask another question before
3 so I can put your answer in context.

4 Mr. Andrews, the three matters
5 on the 30(b)(6) Notice, please review
6 those with me again.

7 MR. ANDREWS: Of course. The
8 three matters, "Plaintiffs seeks
9 testimony from Defendant's 30(b)(6)
10 witnesses on the following matters:
11 One, all information related to
12 anti-discrimination policies at
13 Defendant, Raymour Furniture Company,
14 Inc. Two, all information related to
15 disabilities and accomodation of
16 disabilities in the workplace of
17 Defendant, Raymour Furniture Company
18 Inc., and three, all affirmative
19 defenses asserted by Defendants and
20 or to be relied upon in any pleading
21 up to and including trial." That's
22 it.

23 MAGISTRATE TOMLINSON: Go
24 ahead, Ms. Chiclacos.

25 MS. CHICLACOS: We have

1 P. DELGENIO

2 produced an HR employee to respond to
3 the 30(b)(6) Notice. She has
4 testified about the company's
5 anti-discrimination policies, she
6 testified about the company's
7 disability and accommodation
8 policies, she also testified about
9 the affirmative defenses contained in
10 the Answer.

11 For example, we allege as an
12 affirmative defense that the
13 Plaintiff was terminated for
14 legitimate non-discriminatory and
15 non-retaliatory reasons. She talked
16 about her knowledge of the
17 information and her circumstances
18 surrounding it.

19 Throughout the day, Plaintiff's
20 Counsel has tried to ask a number of
21 questions that go beyond the scope of
22 this. This one example that was read
23 to you dealt with the company's
24 response to lawsuits when they are
25 filed, not related to their

1 P. DELGENIO
2 anti-discrimination policies. He
3 most recently was just trying to ask
4 about other complaints filed about
5 the company. So it is our position
6 that that line of questioning that
7 was just described to you, as well as
8 some others that we objected to, is
9 beyond the scope of the 30(b)(6)
10 witness. She is not a fact witness.
11 She has testified to the information
12 in the notice.

13 We have been here almost five
14 hours, with some breaks here today.
15 I have given Plaintiff's Counsel a
16 lot of leeway and there have just
17 unfortunately been points where we
18 have had to object and I instructed
19 the Witness not to answer.

20 MAGISTRATE TOMLINSON: Well,
21 let me say a couple of things here.
22 First of all, since this is a
23 representative from HR, Mr. Andrews,
24 I can understand you asking about the
25 policies and the procedures here, in

1 P. DELGENIO
2 particularly, for example, if the
3 policy statement calls for an
4 internal investigation when a
5 Complaint is made and circumstances
6 that might be similar to the ones
7 underlined in this Complaint, then
8 certainly the Witness should be
9 answering those questions. The
10 Witness, because the Witness is a
11 representative of the company, she
12 can certainly testify to what the
13 general procedures are when somebody
14 makes a Complaint, either informally,
15 internally or once, for example, they
16 get served with a document from the
17 EEOC. Most of this should focus on
18 what the internal procedures are.
19 That is what she is capable of and
20 has the competency to answer.

21 As far as how the company
22 generally handles litigation, I don't
23 care if it is a Complaint or any
24 other, frankly now you are getting
25 into an area that borders on

1 P. DELGENIO

2 litigation strategy, among other
3 things. I don't think it is
4 appropriate for the Witness to answer
5 that type of a question.

6 As far as her not having seen
7 the Notice, it is a little discerning
8 to me, but I am going to go on the
9 assumption that without having seen
10 the Notice, Counsel prepped her
11 witness and she is required to do
12 sufficiently to answer the categories
13 that are in the Notice. And so I
14 don't believe that even for the
15 Complaint, if she has answered the
16 questions with regard to the policy,
17 with regard to the disability and any
18 accommodations and addressed your
19 questions with regard to the
20 affirmative defenses, it seems to me
21 she has done her job there.

22 The other question that I just
23 heard to me is outside of the scope
24 of what she is required to do and,
25 frankly, it falls under more of a

1 P. DELGENIO

2 litigation strategy which is
3 protected.

4 MR. ANDREWS: May I be heard,
5 Your Honor, briefly?

6 MAGISTRATE TOMLINSON: Go
7 ahead.

8 MR. ANDREWS: Thank you, Your
9 Honor.

10 We understand and respect all
11 that Your Honor has said. I do want
12 to note that after our initial call
13 to you this morning, I also
14 introduced not only the Complaint as
15 an exhibit, but my third exhibit was
16 the Defendant's Answer with
17 Affirmative Defenses. Thereafter I
18 asked the Witness if she had ever
19 seen the Answer with the Affirmative
20 Defenses. She replied that she had
21 never seen the document before, then
22 I directed her to all, I believe it
23 is 16 affirmative defenses that the
24 Defendants have interposed and asked
25 her about each one of the 16 and she

1 P. DELGENIO

2 testified that she was not aware of
3 or familiar with any of those
4 affirmative defenses. It is our
5 position --

6 MAGISTRATE TOMLINSON: I don't
7 mean to interrupt you, but if that is
8 the case, I will give Ms. Chiclacos
9 an opportunity to respond to that,
10 but if the affirmative defense here
11 is clearly a category in a notice,
12 since she was handed the document and
13 asked about those affirmative
14 defenses, then she has an obligation
15 to answer those questions. If she
16 said she doesn't have the
17 information, then you need another
18 30(b)(6) to answer those questions
19 and you will have to bring back
20 another witness.

21 MS. CHICLACOS: If we may, the
22 Court Reporter can pull this up,
23 Mr. Andrews asked her if she seen the
24 document. He did not ask her any
25 specific questions about the content

1 P. DELGENIO

2 of the affirmative defenses. The
3 statement that she is unable to
4 testify about the content of those
5 matters is inaccurate.

6 I will say this, I am not
7 disclosing anything privileged, the
8 Witness did testify that she was
9 prepared for this deposition. To go
10 along your point before, there has
11 been no claim or question by Mr.
12 Andrews about the content of the
13 affirmative defenses. In fact, as I
14 stated earlier, she has testified to
15 the content of some of them and that
16 we allege that the company maintains
17 a complaint procedure, it maintains
18 policies and the Plaintiff failed to
19 avail himself of these policies which
20 she testified to.

21 She testified as to the
22 legitimate reasons for his
23 termination, which is one of our
24 affirmative defenses.

25 There has been no specific

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2 question by Mr. Andrews about the
3 affirmative defenses that the Witness
4 has not been able to answer because
5 she did not specifically see the
6 legal language of the Complaint
7 failed to state a claim upon which
8 relief might be granted, yes, but she
9 has not been able to specifically
10 answer any substantive questions
11 about them.

12 MAGISTRATE TOMLINSON: Well,
13 look, two things to note here. One,
14 the Complaint and the Answer are not
15 evidence in this case in any event.
16 From a standpoint, I am not quite
17 sure what the end goal is here with
18 regard to showing the document itself
19 and then asking questions. However,
20 I don't want to put form over
21 substance here.

22 The question is if you made an
23 inquiry of her regarding one of those
24 affirmative defenses, did she answer
25 the questions that you asked her? If

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2 you haven't done that yet, then that
3 is something that you may want to get
4 to before the examination is over
5 today, but otherwise, whether or not
6 she saw the documents is really -- in
7 the upshot of this, it is not
8 positive with regard to her ability
9 to testify here today. Is she
10 competent to answer questions about
11 the affirmative defense, whether she
12 ever seen the formal document itself
13 or not, from the representation from
14 Counsel, she was prepared and she is
15 prepared, so that is something, as I
16 said, you may want to explore before
17 the afternoon is over.

18 I haven't heard anything yet
19 thus far, now that I heard from
20 Ms. Chiclacos, I haven't heard
21 anything that indicates to me that
22 the Witness is not prepared to answer
23 questions with regard to those
24 affirmative defenses.

25 MR. ANDREWS: Your Honor, we

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2 respectfully disagree with
3 Ms. Chiclacos' characterizations. I
4 did ask the Witness about each one of
5 the 16 affirmative defenses and she
6 told me that she was unfamiliar with
7 each one of the 16 affirmative
8 defenses. If it is necessary for me
9 to obtain that exhibit again and
10 reask questions about each one of
11 those 16 affirmative defenses, we
12 will have a longer afternoon than I
13 had hoped, but that is what I will
14 have to do.

15 MAGISTRATE TOMLINSON: Look, I
16 will leave that up to you, the
17 examination. If you believe that the
18 Witness was not properly prepared and
19 didn't sufficiently answer the
20 question, then you can provide me
21 with a copy of the transcript and
22 make an application for relief.

23 MR. ANDREWS: Yes, Your Honor.

24 I believe we are probably going
25 to have to do that. I don't believe

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2 that it is something that we need to
3 explore at this moment.

4 MAGISTRATE TOMLINSON: All
5 right. I will leave that up to you.

6 MR. ANDREWS: Thank you.

7 MS. CHICLACOS: Thank you for
8 your time, Your Honor.

9 MAGISTRATE TOMLINSON: Is there
10 anything else?

11 MR. ANDREWS: I don't think
12 anything that we need to take up
13 right now.

14 MAGISTRATE TOMLINSON: Mr.
15 Andrews, you are taking the
16 deposition, so my normal practice
17 here when I have call-ins regarding
18 deposition disputes is to ask the
19 parties, the attorney who is taking
20 the deposition, when the transcript
21 is prepared, to at least provide me,
22 and I am not looking for the entire
23 thing unless there is an application
24 coming in with it, but I would like
25 to have just the excerpts, a copy of

1 P. DELGENIO

2 the excerpts of the application and
3 the ruling, that would be helpful.
4 All right?

5 MR. ANDREWS: Absolutely, Your
6 Honor.

7 MAGISTRATE TOMLINSON: Thank
8 you both. Have a good rest of the
9 day.

10 MR. ANDREWS: Thank you. Have
11 a nice day.

12 MAGISTRATE TOMLINSON: Thank
13 you, Madame Court Reporter.

14 (Whereupon, a short recess was
15 taken.)

16 MR. ANDREWS: Back on the
17 record. The Witness is back in the
18 room. At this time, the Plaintiff
19 would like to reiterate on the record
20 that we do not believe that the
21 witness offered today is an adequate
22 30(b)(6) deponent with respect to the
23 matters in the Notice of Deposition.

24 We also note that we, I, the
25 Plaintiff's attorney, have been

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obstructed from completing the deposition by Defendant's Counsel's instructions and the Witness did not answer certain questions. We do intend to seek relief from the Court, including costs, as well as another 30(b)(6) witness as the Court may deem appropriate and, at this time, we have no additional questions that we intend to pursue in light of how this deposition has been conducted. That is it for the Plaintiff.

(Continues on next page to include jurat.)

MS. CHICLACOS: Off the record.

(Whereupon, an off-the-record discussion was held.)

(Continued on next page to include jurat.)

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2 MS. CHICLACOS: Okay. Thank
3 you.

4 (Whereupon, at 3:45 P.M., the
5 Examination of this Witness was
6 concluded.)

7

8

9

10 _____
PATRICIA DELGENIO

11

12 Subscribed and sworn to before me

13 this _____ day of _____ 2013.

14

15 _____
NOTARY PUBLIC

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2 E X H I B I T S
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5 MR. ANDREWS 4

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9 INFORMATION AND/OR DOCUMENTS PAGE

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11 Friedmann's employment 84

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13 2) Collateral materials regarding

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15 anti-discrimination policies 100

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2 C E R T I F I C A T E

3
4 STATE OF NEW YORK)
5 COUNTY OF RICHMOND) SS.:
6

7 I, DEBORAH GARZANITI, a Notary Public
8 for and within the State of New York, do
9 hereby certify:

10 That the witness whose examination is
11 hereinbefore set forth was duly sworn and
12 that such examination is a true record of
13 the testimony given by that witness.

14 I further certify that I am not
15 related to any of the parties to this
16 action by blood or by marriage and that I
17 am in no way interested in the outcome of
18 this matter.

19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 14th day of February 2013.

21
22 

23 _____
24 DEBORAH GARZANITI
25

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Defendant(s): _____

Defendant(s): _____

Defendant(s): _____

Defendant(s): _____

Defendant(s): _____

[illegible]

Date: _____

Name of Witness: _____

Signature: _____

Subscribed and sworn to before me

This _____ of _____ 20_____

Notary Public.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
LAWRENCE I. FRIEDMANN,

Plaintiff,

-against-

RAYMOUR FURNITURE CO., INC.,
and LUCY GOLDSTEIN, *individually,*

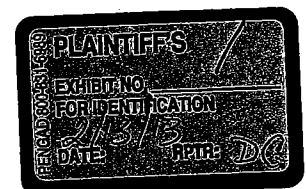
Defendants.
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12 CV 1307 (LDW)(AKT)

**NOTICE TO TAKE
DEPOSITION UPON ORAL
EXAMINATION**

PLEASE TAKE NOTICE that, Plaintiff LAWRENCE I. FRIEDMANN, by his attorneys, The Harman Firm, PC, hereby serves notice, pursuant to Federal Rule of Civil Procedure 30(b)(6), that the testimony upon oral examination of a representative of Defendant RAYMOUR FURNITURE CO., INC., specifically as they relate to matters detailed in *Exhibit A*, attached hereto, will be taken before a notary public who is not an attorney, or an employee of any attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at The Harman Firm, PC, located at 200 West 57th Street, Suite 900, New York, New York 10019, beginning on the 17th day of January 2013, at 10:00 a.m., with respect to evidence material and necessary in the prosecution of this action.

PLEASE TAKE FURTHER NOTICE that the said oral examination will continue from day to day until completed. Plaintiffs reserve the right to use electronic, audio and visual means to record said examination in conjunction with or instead of stenographic recordings, pursuant to applicable Court rules.



Dated: New York, New York
December 19, 2012

By: s/
Kimberly S. Thomsen
Walker G. Harman, Jr.
THE HARMAN FIRM, P.C.
Attorneys for Plaintiff
200 West 57th Street, Suite 900
New York, New York 10019
(212) 425-2600
kthomsen@theharmanfirm.com
wharman@theharmanfirm.com

To: Tara L. Eyer Daub, Esq.
Jessica Chiclacos, Esq.
NIXON PEABODY LLP
Attorneys for Defendants
50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 832-7613
tdaub@nixonpeabody.com
jchiclacos@nixonpeabody.com

EXHIBIT A

Testimony Sought by Plaintiff from Witnesses pursuant to Fed. R. Civ. P. 30(b)(6)

Plaintiffs seeks testimony from Defendants' 30(b)(6) witnesses on the following matters:

1. All information related to anti-discrimination policies at Defendant RAYMOUR FURNITURE CO., INC.;
2. All information related to disabilities and accommodation of disabilities in the workplace at Defendant RAYMOUR FURNITURE CO., INC.;
3. All affirmative defenses asserted by Defendants and or to be relied upon in any pleading up to and including trial.

FILED
CLERK

SUMMONS ISSUED

Walker G. Harman, Jr. [WH-8044]
THE HARMAN FIRM, P.C.
Attorneys for Plaintiff
200 West 57th Street, Suite 900
New York, New York 10019
212-425-2600

2012 MAR 15 PM 4:48

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
LAWRENCE I. FRIEDMANN,

Plaintiff,

-against-

RAYMOUR FURNITURE CO., INC.,
and LUCY GOLDSTEIN, individually.

Defendant.
-----X

Index No.:

COMPLAINT

PLAINTIFF HEREBY
DEMANDS A TRIAL
BY JURY

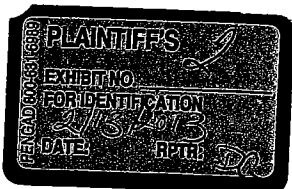
CV 12 - 1307

Plaintiff, LAWRENCE I. FRIEDMANN, by his attorneys, THE HARMAN FIRM, P.C.,
as and for his Complaint of disability and age discrimination against Defendants alleges as
follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is proper under 28 USC § 1331 (a) in that claims arise under federal law, specifically the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623, *et. seq.*, and the Americans with Disabilities Act of 1990, 42 U.S.C. 12112, *et. seq.* The supplemental Jurisdiction of the Court is invoked over the local law cause of action pursuant to 28 U.S.C. § 1367.

2. Venue is properly laid in the Eastern District of New York under U.S.C. § 1391(c), in that the Defendant corporation shall be deemed to reside in any judicial district in



which it is subject to personal jurisdiction at the time the action is commenced. The corporate Defendant owns and operates a retail store in which Plaintiff worked, located at 895 East Gate Blvd, Garden City, NY 11530.

3. Plaintiff has filed a charge with the Equal Employment Opportunity Commission, which issued to the Plaintiff a right to sue letter on December 19, 2011.

PARTIES

4. Plaintiff, LAWRENCE I. FRIEDMANN (hereinafter "FRIEDMANN"), is a resident of Bellerose, State of New York.

5. At all times relevant and hereinafter mentioned, Defendant RAYMOURS FURNITURE CO., INC. (hereinafter "RFCI"), was and is a domestic business corporation, duly existing pursuant to and by virtue of the laws of the State of New York.

6. At all times relevant and hereinafter mentioned, Defendant LUCY GOLDSTEIN (hereinafter "GOLDSTEIN"), was Plaintiff FRIEDMANN's direct supervisor while he was employed by Defendant RFCI.

7. At all times relevant and hereinafter mentioned, Defendant RFCI has offices located at 7248 Morgan Road, Liverpool, NY 13088.

8. At all times relevant and hereinafter mentioned, Plaintiff FRIEDMANN was an employee of Defendant RFCI.

9. At all times relevant and hereinafter mentioned Plaintiff was employed by Defendant RFCI in the role of "Sales Associate."

DEMAND FOR TRIAL BY JURY

10. Plaintiff demands a trial by jury.

FACTUAL BACKGROUND

11. In or about October 2005, Plaintiff FRIEDMANN began working for Defendant RFCI as a "Sales Associate."

12. From January 2006 until late 2010, before Plaintiff FRIEDMANN became ill, Plaintiff FRIEDMANN met all sales quotas imposed by Defendant RFCI and even excelled in his sales numbers as compared to his fellow associates.

DISABILITY DISCRIMINATION

13. Plaintiff FRIEDMANN had his first surgery relating to his Sciatica on or around May 31, 2002.

14. However, before a flare up of his Sciatica on or about May 1, 2008, Plaintiff FRIEDMANN was not hindered by his Sciatica in any way in his employment for Defendant RFCI.

15. Despite this flare up in May 2008, Plaintiff FRIEDMANN continued to meet all of the sales quotas imposed on all sales associates employed by Defendant RFCI.

16. Plaintiff FRIEDMANN did not experience any significant flare ups in his Sciatica from May 1, 2008 until March of 2010.

17. In or around March 2010, Plaintiff FRIEDMANN experienced another flare up of Sciatica.

18. This time, the flare up affected Plaintiff FRIEDMANN's ability to stand for long periods of time, which thereby inhibited his ability to meet the requisite sales numbers.

19. Plaintiff FRIEDMANN sought medical treatment as follows:
- a. On March 3, 2010, Plaintiff FRIEDMANN met with Dr. Jeffrey Shapiro, an Orthopedic Surgeon, with complaints about his Sciatica pain;
 - b. On March 17, 2010, Plaintiff FRIEDMANN returned to Dr. Jeffrey Shapiro's office for further consultation and treatment;
 - c. On April 13, 2010, Plaintiff FRIEDMANN again met with Dr. Jeffrey Shapiro regarding his pain;
 - d. On April 30, 2010, Plaintiff FRIEDMANN met with Dr. Daniel Brietstein, who is a pain management doctor;
 - e. On May 7, 2010, Plaintiff FRIEDMANN received an MRI at Next Generation Radiology office;
 - f. On May 13, 2010, Plaintiff FRIEDMANN received epidurals injections at an Ambulatory Center which were administered by Dr. Daniel Brietstein, the pain management doctor;
 - g. On June 1, 2010, Plaintiff FRIEDMANN received more epidural injections by Dr. Daniel Brietstein;
 - h. On July 8, 2010, Plaintiff FRIEDMANN returned to Dr. Daniel Brietstein's office for a follow-up appointment after treatment and surgery;
 - i. On July 10, 2010, Plaintiff FRIEDMANN began physical therapy sessions at Long Island Physical Therapy;
 - j. On July 12, 2010, Plaintiff FRIEDMANN had another physical therapy session at Long Island Physical Therapy;
 - k. On July 20, 2010, Plaintiff FRIEDMANN had another physical therapy session at

Long Island Physical Therapy;

1. On August 9, 2010, Plaintiff FRIEDMANN met with the supervisor of physical therapy, Dr. Jay Weiss for a consultation regarding further pain management treatment.

20. Throughout Plaintiff FRIEDMANN's medical treatment, Plaintiff FRIEDMANN did not seek disability leave from Defendant RFCI, but simply made a request for reasonable accommodation that he be allowed to rest for short periods of time while on the sales floor so as not to exacerbate his condition and that some consideration be given to the impact this request would have on his sales quotas.

21. Plaintiff FRIEDMANN's sales numbers suffered as a direct result of his Sciatica and resulting treatment. However, Defendants, including Defendant GOLDSTEIN, did not adequately grant Plaintiff FRIEDMANN his accommodation request. Plaintiff FRIEDMANN was chastised for taking breaks and no consideration was given to the impact the breaks would have on his sales quotas.

22. Plaintiff FRIEDMANN was put on a performance review plan in or about April 2011.

23. Plaintiff FRIEDMANN was the only individual put on a performance plan because disability alone, with one other man who used a cane.

24. Despite the fact that Plaintiff FRIEDMANN had sciatica, which directly affected his ability to meet his sales quotas – sales quotas that should have been adjusted as a reasonable accommodation, and had never had difficulty with meeting any sales quotas before his sciatica flared up, Plaintiff FRIEDMANN was summarily terminated.

25. Upon information and belief, no sales associates on the performance plan with

numbers lower than Plaintiff FRIEDMANN were terminated due to performance-related issues.

AGE DISCRIMINATION

26. In or about 2005, Plaintiff FRIEDMANN began his employment by RFCI as a sales associate. From January 2006 to December 2009, the Plaintiff's job and sales performance far exceeded RFCI's minimum volume requirements.

27. In or about February 2011, Defendant GOLDSTEIN asked Plaintiff FRIEDMANN his age and when he planned to retire. Plaintiff did not divulge his age at that time, but stated that he planned to retire approximately five (5) years in the future. After this conversation, Defendant GOLDSTEIN began to refer to Plaintiff FRIEDMANN as "old man" when speaking to him. It was at this time that Plaintiff FRIEDMANN began to believe his age was a problem for his employer.

28. Thereafter, Plaintiff FRIEDMANN's other colleagues and managers began to address him as "old man" when speaking to him.

29. Any time Plaintiff FRIEDMANN's performance was addressed by Defendant GOLDSTEIN, she would say, "that old excuse again."

30. Although other employees were allowed to sit down at work without repercussion and without having to request reasonable accommodation, Plaintiff FRIEDMANN was not allowed these rights, even upon requesting them of his superiors.

31. Upon Plaintiff FRIEDMANN complaining to his superiors about age and disability discrimination, nothing changed; moreover, Plaintiff FRIEDMANN was terminated because of his age and disability in retaliation for his complaints of discrimination.

32. In or about May 2011, Plaintiff FRIEDMANN, along with eight other employees of Defendant RFCI were placed on a coaching plan because these employees were alleged to

have low figures in sales.

33. Plaintiff FREIDMANN was the only one (1) of the eight (8) employees of Defendant RFCI placed on the coaching plan who was thereafter terminated from employment, while many other younger employees had been kept on the coaching plan for a number of years without being terminated.

34. After Plaintiff FRIEDMANN was placed on the coaching plan, the regional manager, Tony Bender, informed Plaintiff FRIEDMANN that his figures “were going to slip again,” despite Plaintiff FRIEDMANN informing Mr. Bender that he believed this was not the case.

35. On or about May 18, 2011, Plaintiff FRIEDMANN was asked by Defendant GOLDSTEIN to interview with the Store Manager at the Carle Place branch owned by Defendant RFCI for consideration for a transfer. Plaintiff met with Laura, a store manager of the Carle Place branch, who stated she “was not looking for anyone for her store who had a few bucks in the bank,” meaning that she did not want an employee who was older and she felt like was about to retire.

36. To Plaintiff FRIEDMANN, this was a derogatory comment aimed at Plaintiff FRIEDMANN’s age. Plaintiff FRIEDMANN was visibly offended by this comment.

37. On or about May 18, 2011, upon Plaintiff FRIEDMANN’s return to his work location, Defendant GOLDSTEIN informed Plaintiff FRIEDMANN that he was not being transferred to the Carle Place branch owned by Defendant RFCI.

38. On or about June 18, 2011, Defendant GOLDSTEIN terminated Plaintiff FRIEDMANN and stated “enjoy your summer in the Hamptons,” a direct reference to Plaintiff FRIEDMANN’s age and Defendant GOLDSTEIN’s opinion, which she had stated before on

many occasions, that Plaintiff FRIEDMANN should retire.

39. On the same day, Iman Kosmi, the showroom manager employed by Defendant RFCI, also stated to Plaintiff FRIEDMANN that his father had resisted retiring but once he did, “he was very happy.”

40. Iman Kosmi further informed Plaintiff FRIEDMANN that he could collect unemployment in addition to any retirement income and that it was “not bad”, implying Plaintiff FRIEDMANN was better off having been terminated by Defendant RFCI.

41. Plaintiff FRIEDMANN was aged 70 upon his termination.¹

FIRST CAUSE OF ACTION

42. Plaintiff FRIEDMANN repeats and realleges each and every allegation contained in paragraphs “1” through “41” with the same force and effect as if separately alleged and reiterated herein.

43. Defendants RFCI and GOLDSTEIN subjected Plaintiff FRIEDMANN to age discrimination, in violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623, *et. seq.*

44. As a result, Plaintiff FRIEDMANN suffered damages for past and future earnings, other employment benefits, attorney’s fees, and emotional injuries in an amount to be determined at trial.

SECOND CAUSE OF ACTION

45. Plaintiff FRIEDMANN repeats and realleges each and every allegation contained in paragraphs “1” through “41” with the same force and effect as if separately alleged and

¹ Plaintiff FRIEDMANN was born June 17, 1941.

reiterated herein.

46. Defendants RFCI and GOLDSTEIN subjected Plaintiff FRIEDMANN to disability discrimination, in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. 12112, *et. seq.*

47. - As a result, Plaintiff FRIEDMANN suffered damages for past and future earnings, other employment benefits, attorney's fees, and emotional injuries in an amount to be determined at trial.

THIRD CAUSE OF ACTION

48. Plaintiff FRIEDMANN repeats and realleges each and every allegation contained in paragraphs "1" through "41" with the same force and effect as if separately alleged and reiterated herein.

49. Defendants RFCI and GOLDSTEIN subjected Plaintiff FRIEDMANN to disability and age discrimination in violation of the New York Executive Law § 296, *et. seq.*

50. As a result, Plaintiff FRIEDMANN suffered damages for past and future earnings, other employment benefits, and emotional injuries in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

51. Plaintiff FRIEDMANN repeats and realleges each and every allegation contained in paragraphs "1" through "41" with the same force and effect as if separately alleged and reiterated herein.

52. Defendant GOLDSTEIN willfully and consciously aided and abetted the pervasive disability and age discrimination Plaintiff FRIEDMANN suffered and refused to

rectify the work environment, despite being responsible for doing so.

53. As a result, Plaintiff FRIEDMANN suffered damages for past and future earnings, other employment benefits, and emotional injuries in an amount to be determined at trial.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (i) On the First Cause of Action, actual damages to be determined at trial, but in no event less than \$1,000,000;
- (ii) On the Second Cause of Action, actual damages to be determined at trial, but in no event less than \$1,000,000;
- (iii) On the Third Cause of Action, actual damages to be determined at trial, but in no event less than \$1,000,000;
- (iv) On the Fourth Cause of Action, actual damages to be determined at trial, but in no event less than \$1,000,000;
- (iv) Punitive damages;
- (v) Attorneys' fees, disbursements and other costs; and
- (vi) Such other and further relief which the Court deems just and proper.

Dated: New York, New York
March 12, 2012



Walker G. Harman, Jr.
THE HARMAN FIRM, PC
Attorneys for Plaintiff
200 West 57th Street, Suite 900
New York, New York 10019
(212) 425-2600

Tara Eyer Daub, Esq. (TE-7943)
Jessica Chiclacos, Esq. (JG-2534)
Nixon Peabody LLP
50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 832-7500
tdaub@nixonpeabody.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LAWRENCE I. FRIEDMANN,

Plaintiff,

- against -

RAYMOUR FURNITURE CO., INC., and LUCY
GOLDSTEIN, individually.

Defendants.

12 CV 1307
(LDW) (AKT)

DEFENDANT'S ANSWER WITH AFFIRMATIVE DEFENSES

Defendant Raymour Furniture Company, Inc., d/b/a Raymour & Flanigan Furniture ("Defendant" or "Raymour & Flanigan"), by its attorneys Nixon Peabody LLP, hereby answers the Complaint of Plaintiff Lawrence Friedmann ("Plaintiff" or "Mr. Friedmann") in accordance with the numbered paragraphs thereof as follows:

JURISDICTION AND VENUE

1. Admits that Plaintiff purports to base the jurisdiction of this Court on the statutes cited in Paragraph 1 of the Complaint but, except as so admitted, denies the allegations set forth in Paragraph 1 of the Complaint.
2. Admits that Plaintiff purports to base proper venue of this action within this Court on the statute cited in Paragraph 2 of the Complaint and that at the time of his termination from



employment, Plaintiff worked at Raymour & Flanigan's Garden City, New York location but, except as so admitted, denies the allegations set forth in Paragraph 2 of the Complaint.

3. Admits the allegations set forth in Paragraph 3 of the Complaint.

PARTIES

4. Admits, upon information and belief, the allegations set forth in Paragraph 4 of the Complaint.

5. Admits the allegations set forth in Paragraph 5 of the Complaint.

6. Admits that at certain points during Plaintiff's employment with Raymour & Flanigan his work was supervised by Lucy Goldstein but, except as so admitted, denies the allegations set forth in Paragraph 6 of the Complaint and refers all questions of law to the Court.

7. Admits the allegations set forth in Paragraph 7 of the Complaint.

8. Admits and avers that Plaintiff was employed by Raymour & Flanigan from on or about October 18, 2005 until the termination of his employment on or about June 18, 2011.

9. Admits the allegations set forth in Paragraph 9 of the Complaint.

DEMAND FOR TRIAL BY JURY

10. Admits that Plaintiff demands a trial by jury.

FACTUAL BACKGROUND

11. Admits the allegations set forth in Paragraph 11 of the Complaint.

12. Denies the allegations set forth in Paragraph 12 of the Complaint.

DISABILITY DISCRIMINATION ALLEGATIONS

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Complaint.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's "flare up" in May 2008, and denies the remainder of the allegations set forth in Paragraph 15 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 16 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's "flare up," and denies the remainder of the allegations set forth in Paragraph 18 of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Complaint, including all sub-parts thereof.

20. Denies the allegations set forth in Paragraph 20 of the Complaint.

21. Denies the allegations set forth in Paragraph 21 of the Complaint.

22. Avers that Plaintiff was placed on a coaching for success plan but, except as so averred, denies the allegations set forth in Paragraph 22 of the Complaint.

23. Denies the allegations set forth in Paragraph 23 of the Complaint.

24. Denies the allegations set forth in Paragraph 24 of the Complaint.

25. Denies the allegations set forth in Paragraph 25 of the Complaint.

AGE DISCRIMINATION ALLEGATIONS

26. Admits that Plaintiff began working for Raymour & Flanigan as a Sales Associate in October 2005 but, except as so admitted, denies the allegations set forth in Paragraph 26 of the Complaint.

27. Denies the allegations set forth in Paragraph 27 of the Complaint.

28. Denies the allegations set forth in Paragraph 28 of the Complaint.

29. Denies the allegations set forth in Paragraph 29 of the Complaint.

30. Denies the allegations set forth in Paragraph 30 of the Complaint.

31. Denies the allegations set forth in Paragraph 31 of the Complaint.

32. Avers that Plaintiff and other employees of Defendant were placed on coaching for success plans in May 2011 due to low sales figures but, except as so averred, denies the allegations set forth in Paragraph 32 of the Complaint.

33. Denies the allegations set forth in Paragraph 33 of the Complaint.

34. Denies the allegations set forth in Paragraph 34 of the Complaint.

35. Avers that in or about May 2011, Plaintiff spoke with Ms. Goldstein and thereafter met with the Carle Place Store Manager Laura D'Ambrosio about a possible transfer to Defendant's Carle Place, New York showroom but, except as so averred, denies the allegations set forth in Paragraph 35 of the Complaint.

36. Denies the allegations set forth in Paragraph 36 of the Complaint.

37. Avers that Plaintiff was informed that he would not be transferred to the Carle Place showroom but, except as so averred, denies the allegations set forth in Paragraph 37 of the Complaint.

38. Admits that Plaintiff's employment with Raymour & Flanigan was terminated on or about June 18, 2011, but, except as so admitted, denies the allegations set forth in Paragraph 38 of the Complaint.

39. Denies the allegations set forth in Paragraph 39 of the Complaint.

40. Denies the allegations set forth in Paragraph 40 of the Complaint.

41. Admits the allegations set forth in Paragraph 41 of the Complaint.

FIRST CAUSE OF ACTION

42. Defendant repeats and restates each and every response to paragraphs 1 through 41 as if fully set forth herein.

43. Denies the allegations set forth in Paragraph 43 of the Complaint.

44. Denies the allegations set forth in Paragraph 44 of the Complaint.

SECOND CAUSE OF ACTION

45. Defendant repeats and restates each and every response to paragraphs 1 through 44 of the Complaint as if fully set forth herein.

46. Denies the allegations set forth in Paragraph 46 of the Complaint.

47. Denies the allegations set forth in Paragraph 47 of the Complaint.

THIRD CAUSE OF ACTION

48. Defendant repeats and restates each and every response to paragraphs 1 through 47 of the Complaint as if fully set forth herein.

49. Pursuant to United States District Court Judge Wexler's October 16, 2012 Memorandum and Order, Plaintiff's claims under the New York Executive Law have been dismissed from this action and, therefore, no responsive pleading is required.

50. Pursuant to United States District Court Judge Wexler's October 16, 2012 Memorandum and Order, Plaintiff's claims under the New York Executive Law have been dismissed from this action and, therefore, no responsive pleading is required.

FOURTH CAUSE OF ACTION

51. Defendant repeats and restates each and every response to paragraphs 1 through 50 of the Complaint as if fully set forth herein.

52. Pursuant to United States District Court Judge Wexler's October 16, 2012 Memorandum and Order, Plaintiff's claims under the New York Executive Law have been dismissed from this action and, therefore, no responsive pleading is required.

53. Pursuant to United States District Court Judge Wexler's October 16, 2012 Memorandum and Order, Plaintiff's claims under the New York Executive Law have been dismissed from this action and, therefore, no responsive pleading is required.

PRAYER FOR RELIEF

The Paragraph in the "Wherefore" clause immediately following Paragraph 53 of the Complaint states requests for relief to which no responsive pleading is required. To the extent a responsive pleading is required, Defendant denies that Plaintiff is entitled to any relief whatsoever.

GENERAL DENIAL

Denies each and every allegation not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim, in whole or in part, upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that they were not interposed within the applicable statute(s) of limitations or contractual limitations period.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent that he failed to properly and timely exhaust all necessary administrative, statutory and/or jurisdictional prerequisites for the commencement of this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent that they were not alleged or encompassed within the administrative charge filed by Plaintiff or the administrative investigation thereof.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the principles/doctrines of estoppel, laches, waiver and/or unclean hands.

SIXTH AFFIRMATIVE DEFENSE

The relief sought herein is barred, in whole or in part, to the extent that Plaintiff has failed to take reasonable steps to mitigate his damages.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because Defendant exercised reasonable care to prevent and promptly correct any allegedly discriminatory behavior.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff unreasonably failed to take advantage of the preventive and corrective opportunities provided by Defendant or to otherwise avoid his alleged harm.

NINTH AFFIRMATIVE DEFENSE

Plaintiff is not a “qualified individual” with a “disability” under the applicable laws.

TENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff may be considered to have a “disability,” Defendant took appropriate steps to reasonably accommodate such “disability.” To the extent that any accommodation was requested but not granted, Plaintiff sought accommodations which are not required and/or are excused by law because they would impose undue hardship on Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to timely engage in an “interactive process” with Defendant respecting some or all of his requested accommodations.

TWELFTH AFFIRMATIVE DEFENSE

Defendant did not aid, abet, ratify, condone, encourage or acquiesce in any alleged discriminatory conduct.

THIRTEENTH AFFIRMATIVE DEFENSE

The decisions and actions, or failure to act, if any, respecting Plaintiff and his employment were not discriminatory, but were justified by legitimate, non-discriminatory reasons and based on factors other than Plaintiff’s age or alleged disability.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims must be dismissed because Defendants would have made the same employment decisions regardless of Plaintiff’s age and alleged disability.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff’s claims for emotional distress are barred, in whole or in part, by the exclusivity provisions of Sections 10 and 11 of the New York State Workers’ Compensation Law.

SIXTEENTH AFFIRMATIVE DEFENSE

The claims for punitive damages are barred because Defendant at no time engaged in discriminatory practices or actions with malice or with reckless disregard for Plaintiff's rights. To the contrary, Defendant made a good-faith effort to comply with obligations under the various discrimination statutes.

WHEREFORE, having fully answered Plaintiff's allegations, Defendant respectfully requests that this Court dismiss the Complaint in its entirety, award it the costs and disbursements of this action, including reasonable attorney's fees, and award such other relief as the Court deems just and proper.

Dated: November 14, 2012
Jericho, New York

NIXON PEABODY LLP

/s/
By: _____
Tara Eyer Daub

50 Jericho Quadrangle, Suite 300
Jericho, NY 11753-2728
(516) 832-7613

*Attorneys for Defendant
Raymour Furniture Company, Inc.*

THE HARMAN FIRM, PC

ATTORNEYS & COUNSELORS AT LAW

200 WEST 57th STREET, SUITE 900, NEW YORK, NEW YORK 10019

TELEPHONE 212 425 2600 FAX 212 202 3926

WWW.THEHARMANFIRM.COM

October 11, 2011

VIA CERTIFIED US MAIL

Raymours Furniture Co., Inc.
7248 Morgan Road
Liverpool, NY 13088-0200

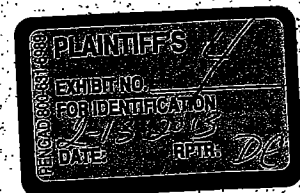
Re: Lawrence I. Friedmann and Raymours Furnitures Co., Inc.

To Whom It May Concern:

This firm has been retained by Lawrence I. Friedmann to represent him with respect to employment-related claims against Raymours Furniture Co., Inc. Based on our preliminary investigation, we have concluded that Raymours Furniture Co., Inc. subjected Mr. Friedmann to age and disability discrimination, and ultimately unlawfully terminated Mr. Friedmann's employment, in violation of Federal and New York State anti-discrimination laws.

Accordingly, we hereby put you on notice that litigation could be imminent and demand that all electronically stored information that relates to Mr. Friedmann's employment at Raymours Furniture Co., Inc. be retained. Because a lawsuit could be imminent, all information from Raymours Furniture Co., Inc.'s computer systems, removable electronic media, and other locations must be retained. This includes, but is not limited to, email and other electronic communication, word processing documents, spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, and network access information.

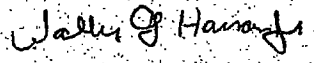
Raymours Furniture Co., Inc. should also preserve the following platforms in their possession or the possession of a third party under the control of Raymours Furniture Co., Inc. (such as an employee or outside vendor under contract): databases, networks, computer systems, including legacy systems (hardware and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges and other storage media, laptops, personal computers, internet data, personal digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail). The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence.



October 11, 2011
Page 2 of 2

Should you have any questions, please do not hesitate to contact our office. Thank you for your attention in this matter.

Very truly yours,
THE HARMAN FIRM, PC


Walker G. Harman, Jr.

CC: Lawrence I. Friedmann

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LAWRENCE I. FRIEDMANN,

Plaintiff,

- against -

RAYMOUR FURNITURE CO., INC., and LUCY
GOLDSTEIN, individually.

Defendants.

**DEFENDANT'S
RESPONSES AND
OBJECTIONS TO
PLAINTIFF'S FIRST
SET OF DOCUMENT
REQUESTS**

12 CV 1307
(LDW) (AKT)

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, defendant Raymour Furniture Company, Inc., d/b/a Raymour & Flanigan Furniture ("Defendant" or "Raymour & Flanigan"), by and through its attorneys Nixon Peabody LLP, hereby responds and objects to Plaintiff Lawrence Friedmann's ("Plaintiff") First Set of Document Requests. Defendant's responses are based on the best information currently available and it reserves the right to amend or supplement its responses to the extent required pursuant to the Federal Rules of Civil Procedure. Subject to both the general and specific objections and the reservations and responses set forth below, documents will be produced, to the extent they exist. The production of any document or information shall not operate as an admission that it is relevant to the subject matter of this action or as a waiver of any objection to its admission into evidence.

GENERAL OBJECTIONS

1. Defendant objects to the requests to the extent that they request information or seek the production of documents that are subject to attorney-client privilege, that were prepared in anticipation of litigation, that constitute attorney work product, that are protected from disclosure under the self-critical analysis doctrine or by any other privilege or immunity or that



are otherwise immune from discovery. Inadvertent identification or production of such information or documents shall not constitute a waiver of any privilege with respect to the subject matter thereof or the information contained therein, and shall not waive Defendant's right to object to the use of any such document or the information contained therein during any subsequent proceeding.

2. Defendant objects to Plaintiff's requests to the extent that they are overly broad, unreasonable and unduly burdensome.

3. Defendant objects to Plaintiff's requests to the extent that they seek documents, information, or materials that are not relevant to the claims or defenses of any party herein, and are not reasonably calculated to lead to the discovery of relevant, admissible evidence, including, without limitation, documents relating to matters that are not raised in the Complaint.

4. Defendant objects to the requests the extent that they seek documents, information, or materials from entities or persons who are not parties to this litigation and which documents, information, or materials were not within the Defendant's knowledge, possession, and/or control at any time during the relevant period alleged in the Complaint.

5. Defendant objects to Plaintiff's requests to the extent that they are not reasonably limited in time and/or call for documents outside the periods of limitation applicable to Plaintiff's claims under the Age Discrimination in Employment Act and the Americans with Disabilities Act.

6. Defendant objects to Plaintiff's requests to the extent that they are vague, ambiguous, not subject to reasoned interpretation, lack sufficient particularity, and/or fail to put Defendant on reasonable notice of the information being requested.

7. Defendant objects to Plaintiff's requests to the extent that they seek documents which are already in Plaintiff's custody or control and/or are readily accessible to him.

8. Defendant objects to Plaintiff's requests to the extent that they seek personal and confidential information that concern individuals, including employees, clients or others having a relationship with Raymour & Flanigan, who are not parties to this action and/or individuals who did not participate in any employment decision affecting Plaintiff, the disclosure of which might violate the privacy rights of, or prejudice, those individuals.

9. Defendant objects to Plaintiff's requests on the ground and to the extent that they attempt or purport to impose obligations beyond those authorized by the Federal Rules of Civil Procedure and/or the Local Civil Rules. Defendant specifically objects to, rejects and repudiates, the "Definitions & Instructions" in Plaintiff's requests and shall provide objections and responses in accordance with the Federal Rules of Civil Procedure and the Local Civil Rules.

10. Defendant's responses are based on the best information presently available, and Defendant reserves the right to amend or to supplement its responses if it obtains other or additional information, but states that it is not obligated to produce documents created after the date of this response.

11. Defendant's obligations to respond to Plaintiff's requests are defined by the objections and limitations contained herein.

DEFINITIONS APPLICABLE TO THIS RESPONSE

The following definitions shall apply to this response:

A. The term “overly broad” shall mean that Defendant objects to a request on the ground that it calls for information that is neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

B. The term “vague” shall mean that Defendant objects to a request on the grounds that it does not identify the information sought with requisite particularity and is ambiguous, and improperly requires Defendant to speculate as to what information is sought. Where a vagueness objection is asserted, however, Defendant will in good faith attempt to construe the request and respond to the request as construed.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST NO. 1:

The complete personnel file of Plaintiff.

RESPONSE TO REQUEST NO. 1:

See General Objections Nos. 2, 3, 5, 6 and 7.

Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents that may be deemed responsive to this request, if any, at Exhibit A.

REQUEST NO. 2:

The complete personnel file of any former direct supervisor or manager of Plaintiff and any employee of Defendants’ in the greater New York area who has been disciplined for failing to meet sales quotas.

RESPONSE TO REQUEST NO. 2:

See General Objections Nos. 2, 3, 4, 5, 6 and 8. Defendant further objects to this request on the ground that the terms “greater New York area” and “disciplined for failing to meet sales

quotas” are vague.

REQUEST NO. 3:

All communications, all documents, and all electronically memorialized information, concerning Plaintiff’s work performance.

RESPONSE TO REQUEST NO. 3:

See General Objections Nos. 2, 3, 5, 6 and 7.

Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents that may be deemed responsive to this request, if any, at Exhibit B.

Defendant also refers Plaintiff to documents produced at Exhibit A.

REQUEST NO. 4:

All communications, all documents, and all electronically memorialized information, concerning any complaints ever received by Defendants about Plaintiff, including, but not limited to, complaints about job performance.

RESPONSE TO REQUEST NO. 4:

See General Objections Nos. 2, 3, 5, 6 and 7.

Subject to and without waiving the foregoing objections, Defendant refers Plaintiff to documents produced at Exhibit A.

REQUEST NO. 5:

All communications, all documents, and all electronically memorialized information written by or sent to Defendants concerning employees hired by Defendants to replace Plaintiff, including but not limited to their age.

RESPONSE TO REQUEST NO. 5:

See General Objections Nos. 2, 3, 4, 5, 6 and 8. Defendant further objects to this request on the ground that the word “replace” is vague.

REQUEST NO. 6:

All communications, all documents, and all electronically memorialized information

relating, reflecting or referring to any and/or all witnesses identified in Defendant's responses to Plaintiffs' First Set of Document Requests and Interrogatories. This request includes but is not limited to any and all personal files held or maintained by Defendants.

RESPONSE TO REQUEST NO. 6:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

REQUEST NO. 7:

All communications, all documents, and all electronically memorialized information, concerning any performance evaluations given to Plaintiff, including the actual performance evaluations, and any emails or memoranda related to the generation of any of Plaintiff's performance evaluations.

RESPONSE TO REQUEST NO. 7:

See General Objections Nos. 2, 3, 5, 6 and 7.

Subject to and without waiving the foregoing objections, Defendant refers Plaintiff to documents produced at Exhibit A.

REQUEST NO. 8:

All communications, all documents, and all electronically memorialized information, concerning any and all complaints filed with and/or pending before the Equal Employment Opportunity Commission, the New York State Division of Human Rights, the New York City Human Rights Commission, the New York State Unemployment Insurance Appeal Board, or any other Court, tribunal or administrative agency against Defendants concerning alleged discrimination or retaliation by Defendants and/or its agents in the last five (5) years leading up to the filing of the Complaint in this action. This request includes any and all documents submitted to and/or obtained from any of the above listed entities concerning Plaintiff.

RESPONSE TO REQUEST NO. 8:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7 and 8. Defendant further objects to Document Request No. 8 as documents related to all complaints of discrimination and retaliation bear no relation to the complaint's allegations.

Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents that may be deemed responsive to this request, if any, at Exhibit C.

REQUEST NO. 9:

All communications, all documents, and all electronically memorialized information, concerning any lawsuit filed against Defendants alleging retaliation or age discrimination in the last five (5) years leading up to the filing of the Complaint in this action, including but not limited to, Complaints, Answers, Settlement Agreements or Judgments entered in all such suits.

RESPONSE TO REQUEST NO. 9:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

REQUEST NO. 10:

All communications, all documents, and all electronically memorialized information, concerning any internal grievances filed against Defendants alleging age, race, national origin discrimination or retaliation.

RESPONSE TO REQUEST NO. 10:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7 and 8. Defendant further objects to Document Request No. 10 as the request for any documents related to grievances concerning race and national origin discrimination would bear no relation to the complaint's allegations.

REQUEST NO. 11:

All training materials (including, but not limited to, training manuals, instructions, pamphlets, videotapes, bulletins and memoranda) used by Defendants, from 2005 through the present, on the topic of discrimination, including but not limited to age discrimination and retaliation as well as policy guidelines regarding severance packages, termination procedures, employee pension information, employment 401(k) and stock options.

RESPONSE TO REQUEST NO. 11:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7, and 8.

Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents from 2010 and 2011 that may be deemed responsive to this request, if any, at Exhibit D.

REQUEST NO. 12:

All communications, all documents, and all electronically memorialized information,

concerning any and all procedures and/or policies of Defendants regarding employment discrimination.

RESPONSE TO REQUEST NO. 12:

See General Objections Nos. 1, 2, 3, 5, 6, and 7.

Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents from 2010 and 2011 that may be deemed responsive to this request, if any, at Exhibit E. Defendant also refers Plaintiff to documents produced at Exhibit D.

REQUEST NO. 13:

All communications, all documents, and all electronically memorialized information concerning training offered by Defendants on the subject of employment discrimination and/or retaliation.

RESPONSE TO REQUEST NO. 13:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7, and 8.

Subject to and without waiving the foregoing objections, Defendant refers Plaintiff to documents produced at Exhibit D.

REQUEST NO. 14:

All communications, all documents and all electronically memorialized information concerning such communications, between Defendants concerning Plaintiff.

RESPONSE TO REQUEST NO. 14:

See General Objections Nos. 1, 2, 5, 6 and 7. Defendant further objects to the phrase "between Defendants" as vague.

Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents that may be deemed responsive to this request, if any, at Exhibit F.

Defendant also refers Plaintiff to documents produced at Exhibit A.

REQUEST NO. 15:

All communications, all documents, and all electronically memorialized information, concerning any and all investigations into employment discrimination with Defendants in the past five (5) years.

RESPONSE TO REQUEST NO. 15:

See General Objections Nos. 1, 2, 3, 4, 5, 6 and 8. Defendant further objects to the term “investigations into employment discrimination with Defendants” as vague.

REQUEST NO. 16:

All employee handbooks and/or personnel manuals and/or written directives distributed and/or posted for employees of Defendants within the last five (5) years.

RESPONSE TO REQUEST NO. 16:

See General Objections Nos. 1, 2, 3, 5, 6 and 7.

Subject to and without waiving the foregoing objections, Defendant refers Plaintiff to documents produced at Exhibit E.

REQUEST NO. 17:

All statements taken and/or obtained by Defendants of any and all persons in connection with this matter.

RESPONSE TO REQUEST NO. 17:

See General Objections Nos. 1, 2, 4 and 6. Defendant further objects to the term “statements” as vague.

Subject to and without waiving the foregoing objections, Defendant states that, at this time, it is not in possession of any statements regarding Plaintiff's claims in this matter.

REQUEST NO. 18:

All communications, all documents, and all electronically memorialized information identified in the answers to Plaintiff's First Set of Document Requests and Interrogatories.

RESPONSE TO REQUEST NO. 18:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9.

Subject to and without waiving the foregoing objections, Defendant refers Plaintiff to documents produced at Exhibits A through F.

REQUEST NO. 19:

All communications, all documents, and all electronically memorialized information upon which Defendants will rely to defend against liability in this matter.

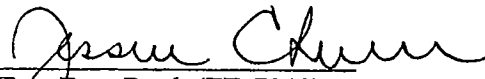
RESPONSE TO REQUEST NO. 19:

See General Objections Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9.

Subject to and without waiving the foregoing objections, Defendant states that it has not yet determined which documents it intends to rely upon to defend against liability in this matter. Defendant refers Plaintiff to document produced at Exhibits A through F.

Dated: November 30, 2012
Jericho, New York

NIXON PEABODY LLP

By: 
Tara Eyer Daub (TE-7943)
Jessica Chiclacos (JG-2534)

50 Jericho Quadrangle, Suite 300
Jericho, NY 11753-2728
(516) 832-7613

Attorneys for Defendant
Raymour Furniture Company, Inc.



Coaching for Success

Associate Name: Larry Friedmann

Date of Review: 05/07/11

Location: Garden City

Next Review Date: 5/21/11

Manager: Lucy Goldstein

Opportunity for Improvement—Below are the standards set by Raymour & Flanigan that you have not yet met.

I want to review with you your underperformance for delivered sales. The date range is 01/01/11 – 05/05/11. You underperformed for this YTD to the minimum expectation of \$252,750 in delivered sales by \$53,537. This dollar amount is based on your \$750,000 Business Planner for 2011 that we will review. You are also underperforming to the minimum expectation for delivered sales for the year and are currently projected to finish the year at \$617,435..

Below will be your specific goals by category for the next 2 weeks and will include an additional \$ in written and delivered expectations per week to help catch up to the amount you are short.

Goals of Coaching for Success—Use specific, quantitative measures whenever possible. Clearly describe all behavioral issues as they relate to and affect team, morale, departmental/individual performance, customer impact, etc.)

	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
Week 1	\$ 24,000 ~	\$ 20,000	2.5%	50%	18%
	Actual	Actual	Actual	Actual	Actual
	Written	Delivered	AGP	Platinum	Bddg
Week 1					
	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
Week 2	\$ 24,000	\$ 20,000	2.5%	50%	18%
	Actual	Actual	Actual	Actual	Actual
	Written	Delivered	AGP	Platinum	Bddg
Week 2					
	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
Week 3	\$ 24,000	\$ 20,000	2.5%	50%	18%

Support from Management Team: (List any tools, training, etc.)



The managers will review with you daily your Ups/Closes, GEBS and Appointments to review your missed opportunities and give you any assistance they can. Please be specific on any areas you would like additional training on so that we can help you to achieve the minimum expectations.

Next Follow Up/Review Date & Expectations:

Week 1	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
	\$	\$	2.5%	50%	Dollars
Week 1	Actual	Actual	Actual	Actual	Actual
	Written	Delivered	AGP	Platinum	Bddg
Week 2	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
	\$	\$	2.5%	50%	Dollars
Week 2	Actual	Actual	Actual	Actual	Actual
	Written	Delivered	AGP	Platinum	Bddg

Additional Comments: At anytime during this coaching for success plan, if your performance does not meet with the minimum expectations set forth in this plan , we will move you to a formal action plan.

Associates Signature *Lawrence Spelman*

Date _____

Manager Signature *[Signature]*

Date 5/7/11



Action Plan & Performance Agreement

Associate Name: Larry Friedmann
 Location: Garden City Store
 Lead Manager: Lucy Goldstein

Date of Review: June 13, 2011
 Period Reviewed:
 Next Review Date: June 20, 2011

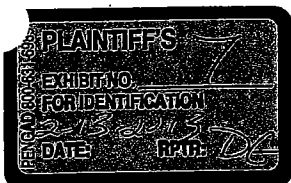
Opportunity/Performance Issue—Below are standards of performance set by Raymour & Flanigan that you have not met.

I want to review with you your underperformance for YTD for 2011. The date range is 01/01/2011-06/10/2011. You underperformed for this YTD period to the minimum expectation of \$322,875 in delivered sales by \$48,190. This dollar amount is based on your \$750,000 Business Planner for 2011 that we will review. You are also underperforming to the minimum expectation in Written Sales, AGP %, Platinum %, Bedding % of Sales. Attached is a SAFR showing your actual numbers for YTD vs. the minimum expectation in each category.

Below will be your specific goals by category for the next 3 weeks.

Goals of the Performance Agreement—Use specific, quantitative measures whenever possible. Clearly describe all behavioral issues as they relate to and affect team, morale, departmental/individual performance, customer impact, etc.)

	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
Week 1	\$18,019	\$29,938	2.0%	50%	\$12,925
	Actual	Actual	Actual	Actual	Actual
	Written	Delivered	AGP	Platinum	Bddg
Week 1	\$	\$			
	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
Week 2	\$ 18,019	\$29,938	2.0%	50%	\$12,925
	Actual	Actual	Actual	Actual	Actual
	Written	Delivered	AGP	Platinum	Bddg
Week 2	\$	\$			
	Written	Delivered	AGP	Platinum	Bddg
	Expectation	Expectation	Expectation	Expectation	Expectation
Week 3	\$18,019	\$29,938	2.0%	50%	\$12,925
	Actual	Actual	Actual	Actual	Actual
	Written	Delivered	AGP	Platinum	Bddg
Week 3	\$	\$			



Actions for the Associate

Larry needs to consistently turn any of his ups over to a Manager if he cannot close them.

He should be going through all of his 10/10's, 12/12's and 6/6's to try and get as much delivered from this past business.

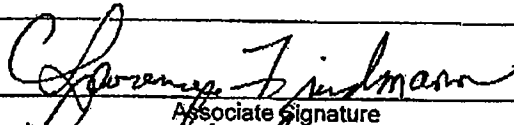
Actions for the Management Team

The managers will review with you daily your Ups/Closes, GEBS and Appointments to review your missed opportunities and give you any assistance they can. Please be specific on any areas you would like additional training on so that we can help you to achieve the minimum expectations.

Associate Comments:

Next Follow Up/Review Date & Expectations:

Failure to meet these minimum expectations at anytime during this Action Plan will result in further disciplinary action up to and including termination.



Associate Signature



Manager Signature

Date



Date

Sales Projection 623,000

RAYMOUR & FLANIGAN FURNITURE				
PERFORMANCE EVALUATION AND DEVELOPMENT FORM: Sales Associate				
Associate: <i>LARRY FRIEDMAN</i>		Year to Date Review: January 1st, 2011 through June 3rd 2011		
PART I: SALES PERFORMANCE				
Accountability	Budget	Actual	Variance (+/-)	Last YTD
Volume Written	\$388,250.00	<i>374,371-</i>	<i>-11,879-</i>	<i>322,105</i>
Volume Delivered	\$309,000.00	<i>256,676-</i>	<i>-52,324-</i>	<i>245,925-</i>
Discounts	7%	<i>12%</i>	<i>-5%</i>	
AGP \$\$\$	\$7,725.00	<i>-9,811</i>		<i>+1,521</i>
Platinum Protection	60%	<i>46.4</i>	<i>-3.6</i>	<i>49</i>
Average \$ per Sale	\$1,500.00	<i>1,671-</i>	<i>+171</i>	<i>1,830</i>
Store Bedding Sales	\$51,697.00	<i>32,918-</i>	<i>-18,779-</i>	<i>33,329-</i>
Prospecting-Minimum 5 Appnts/\$5000 written weekly average <i>6 wks</i>	\$5,000/week	<i>524-</i>	<i>-4,476</i>	
Ups <i>555</i>	Closes <i>186</i>	% <i>33%</i>	TO's <i>66</i>	Prospects <i>91</i>
Exception Updates	Lateness <i>5</i>	Absenteeism <i>0</i>		
GOALS AND DEVELOPMENT				
GOALS: (Define goals and objectives including a date to review to determine if goals were attained.)				
1.) <i>WANTEN + DELIVERED BUSINESS NEEDS TO INCREASE TO MEET THE MINIMUM GOALS.</i>				
2.) <i>Bedding - Below Requirements - NEEDS TO FOCUS WITH EACH CUSTOMER TO TRY & SELL Bedding.</i>				
3.) <i>PROSPECTING - EXTREMELY BAD - AVERAGE 524 OVER A 6 WK PER</i>				
4.) <i>DISCOUNTS + AGP - NEED TO RAISE THE LEVEL IN BOTH OF THESE AREAS</i>				
MANAGER'S COMMENTS: <i>Larry is below average in all areas - He needs to do more IMMEDIATE THAN AROUND.</i>				
ASSOCIATE'S COMMENTS:				
SIGNATURES: <i>[Signature]</i>				
Associate Signature			Date	
Managers Signature			Date	
Additional Comments				

E-BOB OVERVIEW

6/6

10/10

12/12

11/1